

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 10,914 FILED MAY 12 1951

PETITIONER'S BRIEF AND JOINT APPENDIX

CLERK

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

January Term, 1951

AIR TRANSPORT ASSOCIATES, INC., *Petitioner*

v.

CIVIL AERONAUTICS BOARD, *Respondent*

Petition for Review of Orders of the
Civil Aeronautics Board

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STATEMENT OF QUESTIONS PRESENTED

1. Whether this Court should set aside the order of the Civil Aeronautics Board dismissing Petitioner's protest and request for investigation and hearing upon the propriety of authorizing a tariff filed by Pan American World Airways providing a \$75 one-way passenger fare from Fairbanks, Alaska, to Seattle, Washington, cities served by Petitioner; and if so, whether this Court should order the Civil Aeronautics Board to suspend said tariff and proceed with investigation and hearing regarding this matter as requested by Petitioner?

2. Where the Civil Aeronautics Board on May 26, 1950, ordered an investigation and suspension of a \$75 one-way passenger fare from Fairbanks, Alaska, to Seattle, Washington, to determine whether said fare was unjust or unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, and, pending such investigation, suspended said tariff and thereafter allowed Pan American World Airways to cancel said tariff thus voiding the investigation and hearing theretofore ordered by the Civil Aeronautics Board, whereupon Petitioner protested said tariff for the same reasons the Board previously assigned as justifying an investigation, was the Board's later action in refusing to investigate the matter and hold hearings thereon and dismissing Petitioner's protest and request for reconsideration of its order dismissing protest:

a. arbitrary, capricious, contrary to law and not supported by substantial evidence?

b. violative of section 2(c) (49 U. S. C. 402(c)) and section 404(b) (49 U. S. C. 484) of the Civil Aeronautics Act prohibiting undue preferences or advantages?

3. In view of the allegations contained in Petitioner's protest and petition for reconsideration of the Civil Aeronautics Board's order denying said protest, were the orders of the Board dismissing Petitioner's protests contrary to, and did they violate:

a. Section 402 of the Civil Aeronautics Act because the record showed the tariff complained of constituted and promoted destructive competitive practice in that it prescribed a fare below actual cost, the loss for which is made up from mail pay subsidy paid from public funds and appropriated by Congress;

b. Section 1002(a) of the Civil Aeronautics Act requiring an investigation when "reasonable ground" is shown;

c. Section 1002(d) of the Civil Aeronautics Act as such fare is unjust, unreasonable, unjustly discriminatory, unduly preferential, and unduly prejudicial;

d. The Due Process Clause of the U. S. Constitution?

e. Sections 8(b) and 10(e) of the Administrative Procedure Act?

5. Where there is no substantial evidence to support the findings of the Civil Aeronautics Board, must the allegations as pleaded, in the absence of an opportunity to submit evidence, be accepted as true for the purpose of dismissal; and if so, should this Court set aside the orders complained of, order the Board to suspend the tariff here involved, and proceed with investigation and hearing as requested by Petitioner?

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PETITIONER'S BRIEF

JURISDICTIONAL STATEMENT

This Court has appellate jurisdiction under Section 1006 of the Civil Aeronautics Act of 1938, 52 Stat. 1024 (U. S. C. Title 49, 646) and Section 10(e), Administrative Procedure Act (Title 5 U. S. C. 1009(e)).

STATEMENT OF THE CASE

Appellant filed written protest (34A-35A) with the Civil Aeronautics Board, hereinafter referred to as the Board, to the granting of tariff of Pan American World Airways, Inc., of Seventy-Five Dollars (\$75.00) per passenger for travel on Southbound aircraft designated as "cargo aircraft" between Fairbanks, Alaska and Seattle, Washington, the cities served by petitioner, and asked the Board to suspend this proposed tariff and to institute an investigation thereof pursuant to Section 1002 of the Civil Aeronautics Act (49 U. S. C. 642). The Board thereupon dismissed Petitioner's protest by Order, Serial Number E-4743, dated October 18, 1950, and Docket Number 4700 (70A). Appellant then filed a Petition for Reconsideration of said Order of Dismissal (71A-76A), which petition was denied by the Board on December 8, 1950, in Order designated as Serial Number E-4919 and Docket Number 4700 (76A-77A), the Board stating:

"Neither the original protest nor the petition for reconsideration state facts which warrant any action by the Board, and therefore the petition should be dismissed."

This petition for review directed to these two Orders avers that the Board's dismissal and refusal to reconsider plaintiff's protests was arbitrary, capricious, contrary to law, and deprived petitioner of its right to a hearing on this substantially important matter, in which petitioner has a substantial interest, and violates the Civil Aeronautics Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment to the Constitution of the United States. (12A). As no hearing was held, no evidence was introduced, and the record before the Court which is set forth in the Joint Appendix (31A to end) consists of the papers certified to this court by the Board as the record upon which the orders complained of were entered.

Petition for review, as set forth in the Appendix (1A-31A), asks this Court to set aside the Orders complained of, suspend said tariff, and order further proceedings by the Board in the nature of an investigation and hearing to determine whether the fare allowed Pan American World Airways System of Seventy-five Dollars (\$75.00) for "travel on cargo aircraft" one way from Fairbanks, Alaska, to Seattle, Washington, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial as mentioned in Section 1002(d) of the Civil Aeronautics Act (52 Stat. 1018, 49 U. S. C. 642 (d)), and asks this Court to grant petitioner such other, further and different relief as to the Court may seem just and proper. (12A).

STATUTES INVOLVED

Title 49 U. S. C. Para. 402 (c) provides:

"The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;"

Section 404 (b) of the Civil Aeronautics Act of 1938, 52 Stat. 993, 49 U. S. C. 484, provides:

"(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 406 of the Civil Aeronautics Act of 1938, 52 Stat. 998, 49 U. S. C. 486, provides:

* * * *

“(b) In fixing and determining fair and reasonable rates of compensation under this section, the Authority, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Authority shall take into consideration, among other factors, the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense.”

Section 411 of the Civil Aeronautics Act of 1938, 52 Stat. 1003, 49 U. S. C. 491, provides:

“The Authority may, upon its own initiative or upon complaint by any air carrier or foreign air carrier, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier or foreign air carrier has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation. If the Authority shall find, after notice and hearing, that such air carrier or foreign air carrier is engaged in such unfair or deceptive practices or unfair methods of competition, it shall

order such air carrier or foreign air carrier to cease and desist from such practices or methods of competition."

Section 1002 of the Civil Aeronautics Act of 1938, 52 Stat. 1018, 49 U. S. C. § 642, provides:

"(a) Any person may file with the Authority a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Authority to investigate the matters complained of. Whenever the Authority is of the opinion that any complaint does not state facts which warrant an investigation or action on its part, it may dismiss such complaint without hearing.

INVESTIGATIONS ON INITIATIVE OF AUTHORITY

(b) The Authority is empowered at any time to institute an investigation, on its own initiative, in any case and as to any matter or thing concerning which complaint is authorized to be made to or before the Authority by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. The Authority shall have the same power to proceed with any investigation instituted on its own motion as though it had been appealed to by complaint.

ENTRY OF ORDERS FOR COMPLIANCE WITH ACT

(c) If the Authority finds, after notice and hearing, in any investigation instituted upon complaint or upon its own initiative, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Authority shall issue an appropriate order to compel such person to comply therewith.

POWER TO PRESCRIBE RATES AND PRACTICES OF
AIR CARRIERS

(d) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Authority shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected or received by any air carrier for interstate or overseas air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Authority shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective: Provided, That as to rates, fares, and charges for overseas air transportation, the Authority shall determine and prescribe only a just and reasonable maximum or minimum or maximum and minimum rate, fare, or charge.

RULE OF RATE MAKING

(e) In exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, the Authority shall take into consideration, among other factors—

(1) The effect of such rates upon the movement of traffic;

(2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

(3) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;

(4) The inherent advantages of transportation by aircraft; and

(5) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, eco-

nomical, and efficient management, to provide adequate and efficient air carrier service.

REMOVAL OF DISCRIMINATION IN FOREIGN AIR TRANSPORTATION

(f) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Authority shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Authority may alter the same to the extent necessary to correct such discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge, or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice.

SUSPENSION OF RATES

(g) Whenever any air carrier shall file with the Authority a tariff stating a new individual or joint (between air carriers) rate, fare, or charge for interstate or overseas air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Authority is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other formal pleading by the air carrier, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon, the Authority, by filing with such tariff, and delivering to the air carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such

tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice, for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Authority may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when such tariff would otherwise go into effect; and, after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Authority may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, charge, classification, rule, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule, regulation, or practice shall go into effect at the end of such period: Provided, That this subsection shall not apply to any initial tariff filed by any air carrier."

Section 1006 of the Civil Aeronautics Act of 1938, 52 Stat. 1024, 49 U. S. C. § 646, provides:

"(a) Any order, affirmative or negative, issued by the Authority under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the circuit courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

VENUE

(b) A petition under this section shall be filed in the court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

NOTICE OF AUTHORITY; FILING OF TRANSCRIPT

(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Authority by the clerk of the court; and the Authority shall thereupon certify and file in the court a transcript of the record, if any, upon which the order complained of was entered.

POWER OF COURT

(d) Upon transmittal of the petition to the Authority, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Authority. Upon good cause shown, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate: Provided, That no interlocutory relief may be granted except upon at least five days' notice to the Authority.

FINDINGS OF FACT BY AUTHORITY CONCLUSIVE

(e) The findings of facts by the Authority, if supported by substantial evidence, shall be conclusive. No objection to an order of the Authority shall be considered by the court unless such objection shall have been urged before the Authority, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

CERTIFICATION OR CERTIORARI

(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Authority shall be subject only to review by the Supreme Court of the United States upon certifica-

tion or certiorari as provided in sections 239 and 240 of the Judicial Code."

Section 10 (e) of the Administrative Procedure Act, Title 5, U. S. C. Sec. 1009(e), provides:

"(e) Scope of Review.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

Fifth Amendment, Constitution of the United States:

"No persons shall be * * * deprived of life, liberty or property without due process of law * * *."

STATEMENT OF POINTS

The orders of the Civil Aeronautics Board dismissing petitioner's protest and denying petition for reconsideration violated and were contrary to:

- 1) the Civil Aeronautics Act,
- 2) the Administrative Procedure Act,
- 3) the "due process" clause of the Fifth Amendment to the Constitution of the United States, and were
- 4) arbitrary, capricious, and otherwise contrary to law.

SUMMARY OF ARGUMENT

I

In view of the previous decision of the Board suspending the \$75. tariff from Fairbanks, Alaska, to Seattle, Washington, absent any finding of changed circumstances, the Board's Action in denying petitioner's protests was arbitrary, capricious, contrary to law, and without facts to support it.

II

The tariff in question is unjust, unreasonable, unjustly discriminatory, unduly preferential, and unduly prejudicial within the meaning of Section 1002(d) of the Civil Aeronautics Act (49 U. S. C. 642(d)) as shown by Petitioner's protest and Petition for reconsideration, and the Board erred in dismissing same.

III

The Board erred in dismissing Petitioner's protest and petition for reconsideration because such action is contrary to the mandatory provisions of Section 1002 of the Civil Aeronautics Act (49 U. S. C. 642).

IV

The Board's orders dismissing the protest and petition for reconsideration were contrary to Section 402 of the Civil Aeronautics Act as this protest shows that the tariff in question constitutes and promotes destructive competitive practice in that it prescribes a fare below actual cost, the loss thus incurred by Pan American World Airways being paid by mail pay subsidy granted from the United States Treasury.

V

The Board erred in dismissing petitioner's protest and petition for reconsideration because upon the record before it there was no substantial evidence to support such action and this dismissal was contrary to the provisions of the Administrative Procedure Act and violated the "due process" clause of the Fifth Amendment to the Constitution of the United States.

ARGUMENT

I

In View of the Previous Decision of the Board Suspending the Seventy-five Dollar Tariff From Fairbanks, Alaska, to Seattle, Washington, Absent Any Finding of Changed Circumstances, the Board's Action in Denying Petitioner's Protest Was Arbitrary, Capricious, Contrary to Law, and Without Facts to Support It.

The Civil Aeronautics Board suspended the Seventy-Five Dollar tariff of Pan American from Fairbanks, Alaska, to Seattle, Washington, by its "Order of Investigation and Suspension" (32A, 33A). In this "Order of Investigation and Suspension", the Board acted upon its own initiative, indicating that an investigation was required to determine whether this tariff was or would be

"unjust or unreasonable, unjustly discriminatory, or unduly preferential, or unduly prejudicial". In this Order, the Board assigned the matter for hearing before an Examiner of the Board (33A). Subsequently, the Board consolidated dockets 4502 and 4508 (42A), and assigned these matters for hearing before an Examiner.

This tariff (78A-81A) which the Board suspended was for the same fare over the same route of the same carrier, Pan American World Airways, Inc., as the tariff protested by petitioner, to-wit, CAB No. 64, issued June 30, 1950 (86A-89A).

As there is no evidence or finding to show changed circumstances, it follows that the same reasons which caused the Board to suspend Tariff No. 54 (78A-81A) existed at the time the Board denied petitioner's "protest" and its "Petition for Reconsideration". This latter action, upon the state of the record here, was clearly arbitrary, capricious, contrary to law and without facts to support it.

The determination of the Board in dismissing petitioner's protest and permitting this tariff is and will be reflected upon the passenger operations of petitioner, who is in competition with all carriers, including Pan American World Airways, who are transporting passengers from Fairbanks, Alaska, to Seattle, Washington. The fare of \$75 allowed Pan American World Airways thus materially affects petitioner's income from passenger transportation upon which it depends for its livelihood.

This shows the necessity of requiring a hearing so that petitioner might be afforded a reasonable opportunity to establish by producing evidence at a hearing held for this purpose to show, as the Civil Aeronautics Board on May 26, 1950, indicated, that this Seventy-five Dollar fare is "unjust or unreasonable, unjustly discriminatory, or unduly preferential, or unduly prejudicial" within the meaning of section 1002(d) of the Civil Aeronautics Act 49 U. S. C. 642(d) (*infra*, page 6).

As was said by the United States Supreme Court in a case involving rates to be charged by marketing agencies under the jurisdiction of the Department of Agriculture, *Morgan v. United States* (304 U. S. 1, 82 L. ed. 1129, 1132):

“* * * Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.”

By dismissing petitioner's protest and request for reconsideration, the board not only failed to perform its plain ministerial duty by conducting an investigation, but this illegal action also deprived petitioner of the opportunity to learn just what air craft was deemed “cargo aircraft” within the meaning of the vague, indefinite and uncertain wording of the tariff; and illegally deprived petitioner of the right to prove the facts set forth in its protest (65A-69A) and its Petition for Reconsideration of order dismissing this protest (71A-75A). This order of the Board whereby it refused to investigate the matters set forth in Petitioner's protest as required by Sec. 1002 of the Civil Aeronautics Act (49 U. S. C. 642) violated the now well known principle of law as enunciated by the United States Supreme Court in *Morgan v. U. S.*, *supra*.

These orders of the Board therefore should be set aside and the Board ordered to investigate Petitioner's complaint and hold hearings thereon in order that Petitioner may present the facts as alleged in its Protest (65A-69A) and its Petition for Reconsideration (71-75A). The allegations of Petitioner's protest and its Petition for reconsideration must now be accepted as true for the purpose of this proceeding. When proven they will amply justify the relief sought by Petitioner.

II

The Tariff In Question Is Unjust, Unreasonable, Unjustly Discriminatory, Unduly Preferential, and Unduly Prejudicial Within the Meaning of Section 1002(d) of the Civil Aeronautics Act (49 U. S. C. 642(d)) as Shown by Petitioner's Protest and Petition for Reconsideration, and the Board Erred in Dismissing Same.

Among the grounds for petitioner's protests (66A) were that the proposed fares and supporting rules:

1. Were below the cost of operation;
2. Cannot be considered as promotional;
3. Are unjust, unreasonable, unjustly discriminatory, unduly prejudicial to the industry and the public (Section 1002(d) of the Civil Aeronautics Act) 49 U. S. C. 642(d) (*infra*, p. 6).
4. Hinder the progress of the non-subsidized air transportation industry;
5. Impose heavy burdens upon the government and thereby the taxpayers, in the form of subsidy air mail pay;
6. Unduly divert traffic from normal-fare flights and established services and would not develop new traffic;
7. Fail to define "cargo aircraft" (67A);
8. Results in an unfair, uncertain, discriminatory and arbitrary fare structure, as well as being illogical and unreasonable;
9. Would disrupt the present competitive balance during the present emergency when the air transportation industry is confronted with rising prices and wages and the diversion of aircraft;

10. Is designed to accomplish the same purpose as that for a "space available" fare which the Board suspended and made the subject of the pending investigation under Docket No. 4508, there being obviously no substantial difference between the proposals.

11. Require a hearing to carry out the purposes of the Civil Aeronautics Act in order that all the facts and circumstances may be developed which underlie Pan American's proposal in this tariff to cut, wastefully and uneconomically, the prevailing air fare levels, which proposal is not in the public interest.

12. Constitute an experiment (68A) which should not proceed without investigation and study, after mature consideration of the evidence in a hearing contemplated by the investigation;

13. Is an attempt to evade full, fair and complete consideration by Pan American of its previous proposal as there is no substantial difference between this tariff and the tariff previously suspended by the Board and constitutes circumventual tactics;

14. For passengers being transported in so-called "cargo aircraft", establishes different fares for each type of aircraft, which would further hinder the natural development of air transportation;

15. Should not be approved until action is taken on the United States—Alaska Service case, Docket No. 3286, et al, which case at this time has not been decided, as they constitute a radical change in the rate structure between the United States and Alaska.

The foregoing allegations contained in petitioner's protest (65A-69A) were reiterated in petition for reconsideration of order dismissing protest, which petition contained allegations to the effect that the Board's order of dismissal (70A-71A)):

1. Fails to justify the economic loss resulting from the reduction in fares and to explain the impossibility of a reasonable increase in the volume of passenger traffic in order to make up the loss;

2. Fails (74A) to explain the unjust, discriminatory and unduly prejudicial character of the double system of fares which complicate the Pan American tariff which is protested;

3. Fails to state the economic justification for allowing a tariff which is below Pan American's cost of operation and which is not promotional in character;

4. Fails to answer petitioner's protest as to its relation to U. S. Alaska Service case, Docket No. 3286, et al, as yet undecided by the Board.

5. Fails to explain any of the facts and circumstances set forth in the protest; petitioner can only speculate and presume the substantive reasons of the Board for its action;

6. Neither the tariff in question nor the Board in its order identified (74A) "the character of the transportation which will be used under the Special Fare for Travel on Cargo Aircraft tariff. It is obvious that a plush transport with an empty seat is not a cargo plane and should not be so considered for purposes of a tariff. It is also obvious that a cargo plane with bucket seats can not be considered as a passenger vehicle for purposes of a Special Fare for Travel on Cargo Aircraft tariff. As a matter of fact, Pan American transports a quantity of cargo on all flights, thereby adding further uncertainty in the differentiation between passenger and cargo aircraft. In view of the foregoing it is highly speculative as to just what services the public is en-

titled to under the tariff as proposed by Pan American and approved by the Board."

7. The fare is discriminatory (75A) and violates Section 404(b) of the Civil Aeronautics Act of 1938 (49 U. S. C. 484(b)) (*infra* 3-4)

The foregoing allegations of petitioner's protest and petition for reconsideration, which for the purpose of this action, in the absence of an opportunity of petitioner to present evidence, should be considered as true in determining the issues here presented involving the dismissal of these protests.

The foregoing facts as set forth in these protests clearly show that the proposed tariff violates and is contrary to the provisions of Section 1002(d) of the Civil Aeronautics Act (49 U. S. C. 642(d)) (*infra*, p. 6).

III

The Board Erred in Dismissing Petitioner's Protest and Petition for Reconsideration Because Such Action Is Contrary to the Mandatory Provisions of Section 1002 of the Civil Aeronautics Act (49 U. S. C. 642).

Petitioner's "Protest" (65A-69A) and its "Petition for Reconsideration" (71A-75A) the allegations of which are summarized under II of this brief, *infra*, p. 15 to 18) required an investigation and hearing by the Board under the provisions of Section 1002(a) of the Civil Aeronautics Act (49 U. S. C. 642(a)), (page 5, *infra*) which provides:

(when) "there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Authority to investigate the matters complained of" . . .

The facts set forth in this "Protest" and "Petition for Reconsideration" show a "reasonable ground" for investigation of this matter and the Board's dismissal of petitioner's "Protest" and its "Petition for Reconsideration" is contrary to the above quoted mandatory provisions of Section 1002 of the Civil Aeronautics Act (49 U. S. C. 642).

IV

The Board's Orders Dismissing the Protest and Petition for Reconsideration Were Contrary to Section 402 of the Civil Aeronautics Act (49 U. S. C. 482) As This Protest Shows That the Tariff In Question Constitutes and Promotes Destructive Competitive Practice in That It Prescribes a Fare Below Actual Cost and the Loss Thus Incurred by Pan American World Airways ~~Being~~ Paid by Mail Pay Subsidy Granted From the United States Treasury.

During the oral argument before the Board on the Alaska Service Case, (8A) prior to the promulgation of the tariff in question by Pan American World Airways, Inc., there was presented and displayed to the Board by petitioner's president, Amos E. Heacock, a chart computed from revenue ton-mile data on file with the Board. Petitioner's president orally (9A) explained to the Board the implications of the chart, contending that it indicated Pan American World Airways, Inc., was meeting nonsubsidized competition by below-cost operations reimbursed by mail subsidies. This chart was included in Air Transport Associates' brief submitted to the Board by petitioner in the Alaska Service Case, a copy of which chart appears on page 26A of the appendix to this brief. This chart is also published on page 181 of the Hearings on H. R. 2908 and H. J. Res. 331 before the Subcommittee on Transportation of the House Interstate and Foreign Commerce Committee (81st Cong., 2d Sess.) in connection with proposed legislation on separation of subsidies from compensatory mail pay.

On page 180 of these Hearings there is also published a table as Appendix D to the testimony of Amos E. Heacock, President, Independent Air Carrier Conference, also President of petitioner corporation, a copy of which is found on page 27A of the appendix to this brief. This

shows conclusively that the Board was apprised of the fact that the Alaskan Division of Pan American World Airways, Inc., was quoting tariffs below actual cost, that losses were reimbursed by mail subsidy and that Pan American World Airways, Inc., was indulging in destructive competitive practices contrary to the Civil Aeronautics Act at the expense of petitioner.

This chart indicates that Pan American was quoting a rate of fifteen cents per pound on air freight between Fairbanks and Seattle. The chart also indicated that Pan American's costs for transporting each pound for 1560 miles as derived from Pan American's revenue ton-mile data on file with the Civil Aeronautics Board was 44.07 cents. The loss occasioned by such below-cost transportation was shown by the chart to have been reimbursed to Pan American by 14.44 cents per pound in airmail subsidy from the Treasury of the United States. The chart further indicated that Pan American would have suffered a loss of 11.45 cents per pound as a result of the below-cost operation if the Board had not awarded Pan American Airways the 14.44 cents per pound it found Pan American in the "need * * * for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation," as provided in Section 406(b) of the Civil Aeronautics Act, 52 Stat. 998, 49 U. S. C. 486. (*infra*, page 3) Thus, it is contended that such losses were not incurred under honest, economical, and efficient management but were in fact incurred by destructive competitive practices and constitute unjust discrimination contrary to the provisions of Title 49 U. S. C. paragraph 402(c). Were a hearing held as requested, it would be shown that Pan American World Airways, Inc., is engaged in "unfair or deceptive practices or unfair methods of competition" as

precluded by section 411 of the Civil Aeronautics Act of 1938 (52 Stat. 1003, 49 U. S. C. 491) (*infra*, pages 4 and 5)

Published statistical data covering air traffic carried in the past conclusively shows that the Alaskan Division of Pan American World Airways, Inc., when their net operating income excludes the subsidy granted by the United States was insufficient to maintain their operation. In this connection attention is invited to the tables appearing at pages 1207 and 1208 in the printed hearings before the Senate Committee on Interstate and Foreign Commerce (81st Cong., 1st Sess.) pursuant to S. Res. 50, which tables are reproduced at pages 28A, 29A, 30A and 31A of the appendix to this brief.

V

The Board Erred in Dismissing Petitioner's Protest and Petition for Reconsideration Because Upon the Record Before It There Was No Substantial Evidence to Support Such Action and This Dismissal Was Contrary to the Provisions of the Administrative Procedure Act and Violated the "Due Process" Clause of the Fifth Amendment to the Constitution of the United States.

An examination of the whole record of proceedings in this matter, which this Court may review, *Dorsey v. Kingsland*, 173 F. 2d 405, 84 U. S. App. D. C. 264, discloses no substantial evidence to support the action of the Board in dismissing petitioner's protest (65A-69A) and its petition for reconsideration (71A-75A).

The findings of the Board contain no facts upon which it reached its conclusions. Therefore, its orders dismissing petitioner's protest (70A-71A) and denying petition for reconsideration (76A-77A) are defective in that they do not meet the requirements of Section 8(b) of the Administrative Procedure Act (Title 5 U. S. C. 1007(b)), which provides:

“* * * All decisions (including initial, recommended or tentative decisions) shall become part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof. * * *”

The Board's order dismissing protest did not conform with the above requirements of law and petitioner was unable from this order to determine what other or additional matter could be presented to persuade the Board to take the required action.

The intention of Congress in enacting the above-quoted law is found in the Committee Report accompanying this measure (Sen. Rep. pp. 24-25, H. R. Rep. p. 39 (Sen. Doc. pp. 210-211, 273) which states as follows:

“* * * Furthermore, without a disclosure of the basis for the exercise of, or failure to exercise, discretion, the parties are unable to determine what other or additional facts they might offer by way of rehearing or reconsideration of decisions.”

A further reason that these orders should be set aside is found in Section 10(e) of the Administrative Procedure Act as a consideration of them in the light of the record now before the Court will show that they are:

1. arbitrary, capricious, constitute an abuse of discretion, are otherwise not in accordance with law;
2. contrary to constitutional right;
3. short of statutory right;
4. fail to observe the procedural requirement of law.

Further, these orders complained of herein have the effect of erroneously depriving petitioner of a property right contrary to the “due process” clause of the Fifth Amendment to the Constitution of the United States.

CONCLUSION

It is respectfully submitted that this Court should set aside the orders of the Civil Aeronautics Board which dismissed petitioner's protest and denied its petition for reconsideration and order the Civil Aeronautics Board to:

1. Suspend the tariff of Pan American World Airways providing a \$75.00 one-way fare from Fairbanks, Alaska, to Seattle, Washington, on "cargo aircraft", and
2. Proceed with investigation and hearing upon petitioner's protest in accordance with Section 1002 of the Civil Aeronautics Act (49 U. S. C. 642).

Respectfully submitted,

WARREN E. MILLER
910 17th St., N. W.
Washington 6, D. C.
Attorney for Petitioner

APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,914

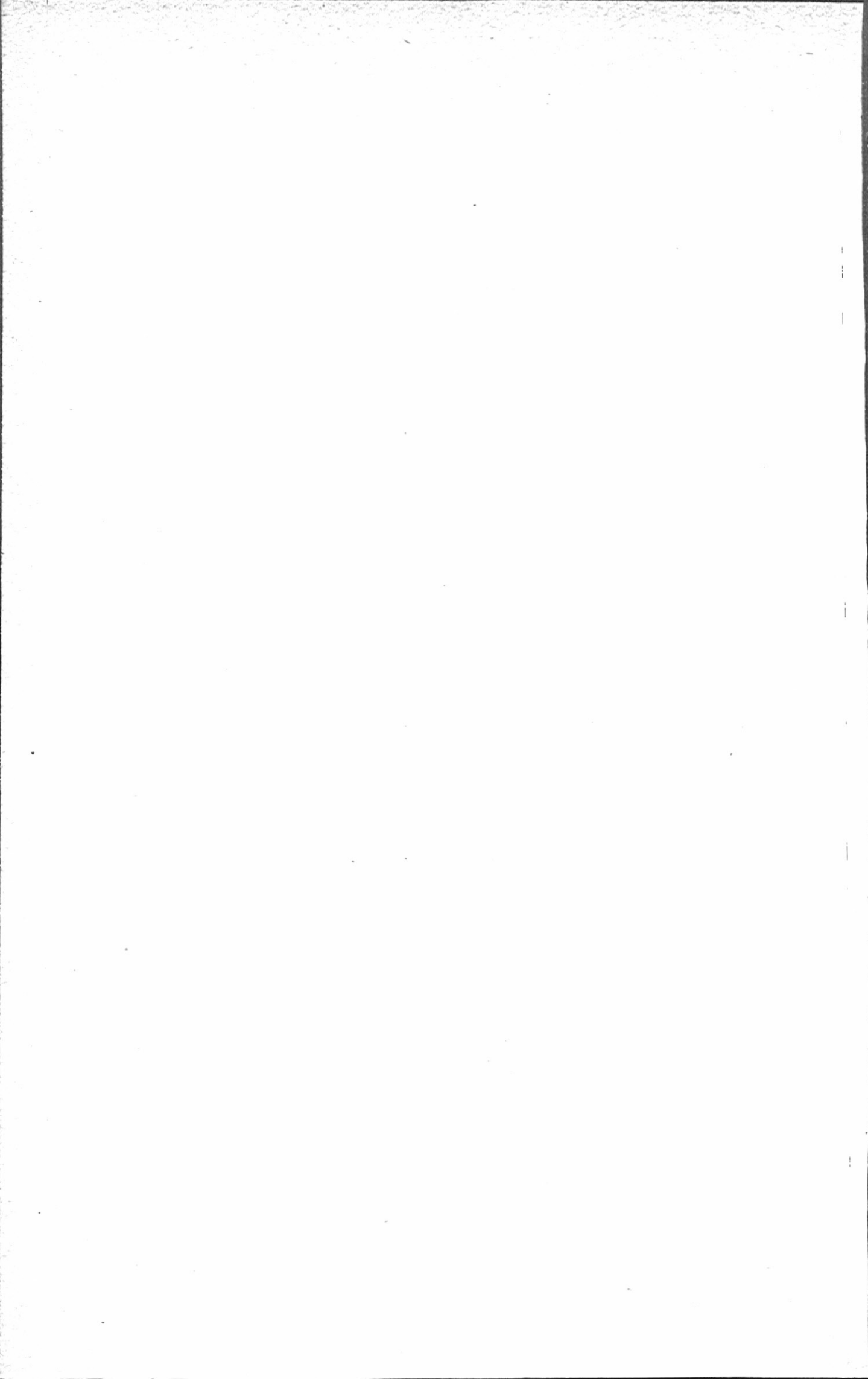
AIR TRANSPORT ASSOCIATES, INC., *Petitioner,*

v.

CIVIL AERONAUTICS BOARD, *Respondent.*

Petition for Review of Order of Civil Aeronautics Board

JOINT APPENDIX



Filed
2/7/51

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

JANUARY TERM, 1951

No. 10914

AIR TRANSPORT ASSOCIATES, INC.,
Petitioner,

v.

CIVIL AERONAUTICS BOARD,
Respondent

**PETITION FOR REVIEW OF ORDERS OF THE CIVIL
AERONAUTICS BOARD**

WARREN E. MILLER,
910 17th Street, N. W.,
Washington 6, D. C.,
Attorney for Petitioner.

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

JANUARY TERM, 1951

No.

AIR TRANSPORT ASSOCIATES, INC.,

against

Petitioner,

CIVIL AERONAUTICS BOARD,

Respondent

**PETITION OF AIR TRANSPORT ASSOCIATES, INC.,
FOR REVIEW OF ORDERS OF THE CIVIL AERO-
NAUTICS BOARD.**

*To the Honorable the Judges of the United States Court of
Appeals for the District of Columbia Circuit:*

The petitioner, Air Transport Associates, Inc., respectfully shows to this Court as follows:

1. This petition is filed under section 1006 of the Civil Aeronautics Act of 1938, 52 Stat. 1024, 49 U. S. C. Sec. 646, to review orders, dated December 8, 1950, and October 18, 1950, of the Civil Aeronautics Board (hereinafter referred to as "the Board").

2. The orders to be reviewed are the Board's Orders Serial Nos. E-4919 and E-4743 in its Docket No. 4700, which orders are attached hereto marked Exhibits A and B, respectively, and by reference made a part hereof.

3. Petitioner is a corporation duly organized and existing under the laws of the State of Washington and having its principal place of business at Seattle, Washington.

4. Petitioner is a Large Irregular Air Carrier, conducting overseas air transportation between the State of Washington and the Territory of Alaska, and is duly authorized by reason of Letter of Registration issued by the Board to transport passengers and cargo between the continental United States and the Territory of Alaska.

5. Petitioner protested the round trip fare as previously proposed by Pan American World Airways, Inc., in the same tariff which proposed a special passenger one-way fare of Seventy-five Dollars (\$75.00) for "space available" fare. The Board subsequently permitted Pan American World Airways, Inc., to cancel this proposed round trip fare, and consequently only that part of petitioner's protest pertaining to the Seventy-five Dollar one-way southbound passenger fare for "travel on cargo aircraft" is the subject matter of this petition for review.

6. The nature of the proceedings before the Board which resulted in the orders to be reviewed was as follows:

a. Pan American World Airways, Inc., acting through its agent, R. C. Lounsbury, sought approval by the Board of its tariff of Seventy-five Dollars (\$75.00) per passenger for travel on southbound aircraft designated as "cargo aircraft" between Fairbanks, Alaska, and Seattle, Washington;

b. Petitioner filed written protest, which is set forth as Exhibit C and by reference made a part hereof, to the granting of this tariff and asked the Board to suspend this

proposed tariff and to institute an investigation thereof pursuant to section 1002 of the Civil Aeronautics Act, 2 Stat. 1018, 49 U. S. C. 642.¹

c. The Board thereupon dismissed petitioner's protest by Order Serial No. E-4743 dated October 18, 1950, in Docket No. 4700, which order is attached hereon as Exhibit B and by reference made a part hereof, and stated as its reason for such action that "said protest does not state

¹

"FILING OF COMPLAINTS AUTHORIZED

"Sec. 1002 (2 Stat. 1018, 49 U.S.C. 642) (a) Any person may file with the Authority a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Authority to investigate the matters complained of. Whenever the Authority is of the opinion that any complaint does not state facts which warrant an investigation or action on its part, it may dismiss such complaint without hearing.

"INVESTIGATIONS ON INITIATIVE OF AUTHORITY

"(b) The Authority is empowered at any time to institute an investigation, on its own initiative, in any case and as to any matter or thing concerning which complaint is authorized to be made to or before the Authority by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. The authority shall have the same power to proceed with any investigation instituted on its own motion as though it had been appealed to by complaint.

"ENTRY OF ORDERS FOR COMPLIANCE WITH ACT

"(c) If the Authority finds, after notice and hearing, in any investigation instituted upon complaint or upon its own initiative, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Authority shall issue an appropriate order to compel such person to comply therewith.

"POWER TO PRESCRIBE RATES AND PRACTICES OF AIR CARRIERS

"(d) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Authority shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected or received by any air carrier for interstate or overseas air transportation, or any classi-

facts which warrant suspension or investigation or other action on its part and should be dismissed."

d. Thereupon petitioner filed with the Board a petition for reconsideration of said order, a copy of which is set forth as Exhibit D, and by reference made a part hereof.

e. The Board on December 8, 1950, entered an order denying petitioner's request for reconsideration of order dismissing its protest of the proposed tariff change, which

fication, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Authority shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective: Provided, That as to rates, fares, and charges for overseas air transportation, the Authority shall determine and prescribe only a just and reasonable maximum or minimum or maximum and minimum rate, fare, or charge.

"RULE OF RATE MAKING

"(e) In exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, the Authority shall take into consideration, among other factors—

- (1) The effect of such rates upon the movement of traffic;
- (2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;
- (3) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;
- (4) The inherent advantages of transportation by aircraft; and
- (5) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

"SUSPENSION OF RATES

"(g) Whenever any air carrier shall file with the Authority a tariff stating a new individual or joint (between air carriers) rate, fare, or charge for interstate or overseas air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Authority is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without

order was designated as Serial No. E-4919 in Docket No. 4700 and is set forth herein as petitioner's Exhibit A and by reference made a part hereof.

7. Petitioner is and was at the time of the filing of this protest engaged in conducting overseas air transportation of passengers and cargo between Fairbanks, Alaska, and Seattle, Washington, which are the same points covered by the Seventy-five Dollar one-way passenger fare for travel on cargo aircraft which is the subject matter of the Board's orders complained of, and petitioner, therefore, has a substantial interest in said orders for the reasons hereinafter set forth.

8. This tariff by Pan American World Airways, Inc., of Seventy-five Dollars is similar to, and apparently designed to accomplish the same purpose as its proposal with respect to "space available" fare which the Civil Aeronautics Board suspended by Order Serial No. E-4256 dated May

answer or other formal pleading by the air carrier, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon, the Authority, by filing with such tariff, and delivering to the air carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice, for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Authority may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when such tariff would otherwise go into effect; and, after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Authority may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, charge, classification, rule, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule, regulation, or practice shall go into effect at the end of such period: Provided, That this subsection shall not apply to any initial tariff filed by any air carrier.

26, 1950, in the matter of a space available fare, and rules and regulations in connection therewith, from Fairbanks, Alaska, to Seattle, Washington, proposed on behalf of Pan American World Airways, Inc., pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, CAB No. 54. The Board in its said order of investigation and suspension dated May 26, 1950, stated:

"The Board having considered the aforesaid fare '(\$75.00)' and rules and regulations in connection therewith, and it appearing to the Board that they may be unjust or unreasonable, unjustly discriminatory or unduly preferential, or unduly prejudicial * * *

"It is ordered that an investigation be and it hereby is instituted to determine whether the space available fare of \$75 from Fairbanks, Alaska to Seattle, Washington * * * are or will be unjust or unreasonable, unjustly discriminatory, or unduly preferential, or unduly prejudicial * * *."

The Board, therefore, having considered that the fare of Seventy-five Dollars may be unjust or unreasonable, unjustly discriminatory, or unduly preferential, or unduly prejudicial, and thus meriting an investigation to determine whether it would be unjust or unreasonable, unjustly discriminatory or unduly preferential or unduly prejudicial should, for the same reasons, ^{should} have granted petitioner's protest and ordered an investigation instead of dismissing the same as was done in the orders complained of here. This action of the Board in refusing, in the case now before this Court, to dismiss petitioner's protest and refusing to reconsider the Board's action was arbitrary, capricious, and contrary to law, to wit, the Civil Aeronautics Act, the Administrative Procedure Act, and the "due process" clause of the Fifth Amendment to the Constitution of the United States, particularly in view of the fact that the Board in a practically identical situation with respect to the same

fare over the same route of the same carrier, Pan American World Airways, Inc., determined that it appeared to the Board that said fare "may be unjust or unreasonable, unjustly discriminatory or unduly preferential, or unduly prejudicial" as provided in section 1002(d) of the Civil Aeronautics Act(52 Stat. 1018, 49 U. S .C. 642(d)).

9. The fare proposed in the tariff submitted by Pan American World Airways, Inc., is without economic justification as

- a. It is below the cost of operation;
- b. It will hinder the progress of the nonsubsidized air transport industry and impose heavy burdens upon the United States and its taxpayers in the form of subsidy air mail pay;
- c. It is not promotional;
- d. It will have the effect of spreading economic chaos throughout the air transport industry;
- e. It would constitute an unsanctioned, undue and excessive diversion of traffic from normal-fare flights and result in debasing and lowering the entire overseas air transport "passenger fare structure" from Fairbanks, Alaska, to Seattle, Washington;
- f. It will shatter and disrupt the present competitive balance of passengers from a most important and vulnerable portion of this Nation during a time of National Emergency as declared by the President of the United States and add to the mounting difficulties encountered by Petitioner and the air transport industry while it is already confronted with rising prices for equipment and parts and higher wages, and the diversion of aircraft to the Korean airlift;
- g. The tariff to which protest is made provides a fare of Seventy-five Dollars "for travel on cargo aircraft." As Pan American World Airways, Inc., transports cargo on all flights and no definition is provided in the tariff of what is meant by "cargo aircraft" it follows that this description of aircraft is vague, uncertain, unintelligible, indefinite, and impossible of determina-

tion. It is highly speculative as to just what service the public is entitled to receive or Pan American World Airways, Inc., is required to give under the tariff as proposed and as has been approved by the Board;

h. The fare of Seventy-five Dollars on "cargo aircraft" is discriminatory against petitioner as well as against other carriers transporting passengers on this overseas route and contrary to section 404(b) of the Civil Aeronautics Act of 1938 (52 Stat. 993, 49 U. S. C. 484), constitutes an "unreasonable preference or advantage" to Pan American World Airways, Inc., in air transportation in the locality between Fairbanks, Alaska, and Seattle, Washington, constitutes an "unjust discrimination," and creates an "undue or unreasonable prejudice or disadvantage" to petitioner with respect to this passenger fare of Seventy-five Dollars.

10. As the Board denied petitioner's protest and request for an investigation and a hearing as authorized by Section 1002 of the Civil Aeronautics Act (52 Stat. 1018, 49 U. S. C. 642) and dismissed petitioner's complaint without a hearing, there was no opportunity for petitioner to present evidence or facts to the Board and to present and urge to the Board petitioner's arguments based upon such evidence and facts. However, the Board was cognizant of the necessity for an investigation and hearing as demonstrated by its action in ordering such investigation of the previously proposed same fare of this same carrier, Pan American World Airways, Inc., over the identical route covered by the tariff to which this petitioner's protest was made in the instant case.

During the oral argument before the Board on the *Alaska Service Case*, prior to the promulgation of the tariff in question by Pan American World Airways, Inc., there was presented and displayed to the Board by petitioner's president, Amos E. Heacock, a chart computed from revenue ton-mile data on file with the Board. Petitioner's president

orally explained to the Board the implications of the chart, contending that it indicated Pan American World Airways, Inc., was meeting nonsubsidized competition by below-cost operations reimbursed by mail subsidies. This chart was included in Air Transport Associates' brief submitted to the Board by petitioner in the *Alaska Service Case*, a copy of which chart is attached hereto marked Exhibit E and asked to be read as a part hereof. This chart is also published on page 181 of the Hearings on H. R. 2908 and H. J. Res. 331 before the Subcommittee on Transportation of the House Interstate and Foreign Commerce Committee (81st Cong., 2d Sess.) in connection with proposed legislation on separation of subsidies from compensatory mail pay. On page 180 of these Hearings there is also published a table as Appendix D to the testimony of Amos E. Heacock, President, Independent Air Carrier Conference, also President of petitioner corporation, a copy of which is attached hereto marked Exhibit F and asked to be read as a part hereof. This shows conclusively that the Board was apprised of the fact that the Alaskan Division of Pan American World Airways, Inc., was quoting tariffs below actual cost, that losses were reimbursed by mail subsidy and that Pan American World Airways, Inc., was indulging in destructive competitive practices contrary to the Civil Aeronautics Act at the expense of petitioner.

This chart which is petitioner's Exhibit E, indicated that Pan American was quoting a rate of fifteen cents per pound on air freight between Fairbanks and Seattle. The chart also indicated that Pan American's costs for transporting each pound for 1560 miles as derived from Pan American's revenue ton-mile data on file with the Civil Aeronautics Board was 44.07 cents. The loss occasioned by such below-cost transportation was shown by the chart to have been reimbursed to Pan American by 14.44 cents per pound in airmail subsidy from the Treasury of the United States.

The chart further indicated that Pan American would have suffered a loss of 11.45 cents per pound as a result of the below-cost operation if the Board had not awarded Pan American Airways the 14.44 cents per pound it found Pan American in the "need * * * for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation," as provided in Section 406(b) of the Civil Aeronautics Act, 52 Stat. 998, 49 U. S. C. 486. Thus, it is contended that such losses were not incurred under honest, economical, and efficient management but were in fact incurred for destructive competitive practices and constitute unjust discriminations contrary to the provisions of Title 49 U. S. C. paragraph 402 (c). Were a hearing held as requested, it would be shown that Pan American World Airways, Inc., is engaged in "unfair or deceptive practices or unfair methods of competition" as precluded by section 411 of the Civil Aeronautics Act of 1938 (52 Stat. 1003, 49 U. S. C. 491). Published statistical data covering air traffic carried in the past conclusively shows that the Alaskan Division of Pan American World Airways, Inc., when their net operating income excludes the subsidy granted by the United States was insufficient to maintain their operation. In this connection attention is invited to the tables appearing at pages 1207 and 1208 in the printed hearings before the Senate Committee on Interstate and Foreign Commerce (81st Cong., 1st Sess.) pursuant to S. Res. 50, which charts are reproduced as petitioner's Exhibit G attached hereto and made a part hereof.

11. Petitioner has a substantial interest in the orders within the meaning of section 1006 of the Civil Aeronautics

Act and will be adversely affected within the meaning of Section 10 of the Administrative Procedure Act if the orders are not reversed and set aside because the orders will, by their terms, result in financial loss of the investment which petitioner has in its business.

12. Petitioner respectfully requests the review of these orders by this Court and that upon such review this Court set aside these orders in accordance with the provisions of the Civil Aeronautics Act and the Administrative Procedure Act. For such relief petitioner relies among others, in addition to the reasons heretofore set forth, upon the following points:

a. These orders should be set aside in accordance with the provisions of Section 10(e) of the Administrative Procedure Act because they are arbitrary, capricious, and an abuse of discretion and otherwise not in accordance with the law;

b. These orders should be set aside, in accordance with the provisions of Section 10(e) of the Administrative Procedure Act, because they are contrary to constitutional right, power, privilege, or immunity;

c. These orders should be set aside, in accordance with Section 10(e) of the Administrative Procedure Act and the Civil Aeronautics Act, because they are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

d. These orders should be set aside, in accordance with the provisions of Section 10(e) of the Administrative Procedure Act and section 1006 of the Civil Aeronautics Act because they fail to observe the procedural requirement of law; and

e. The orders complained of do not show on what facts the Board's decision rests.

13. Error is assigned to the Order of the Board adopted December 8, 1950 Serial No. E-4919 and Order of the Board adopted October 18, 1950, Serial No. E-4743 both in Docket No. 4700 of the Board on the grounds that the course fol-

lowed by the Board in dismissing petitioner's protest and refusing to reconsider Order Serial No. 4743 adopted by the Board on October 18, 1950, was arbitrary, capricious, contrary to law, and deprived petitioner of its right to a hearing on this substantially important matter in which petitioner has a substantial interest in violation of the Civil Aeronautics Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

14. No previous application for relief sought herein has been made to this Court or to any other Court or judge.

WHEREFORE, petitioner prays that this Court set aside the orders complained of and suspend said tariff and order further proceedings by the Board in the nature of an investigation and hearing to determine whether said fare of Seventy-Five Dollars (\$75.00) for "travel on cargo aircraft" is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial as required by Section 1002 (d) of the Civil Aeronautics Act (62 Stat. 1018, 49 U. S. C. 642 (d)), and grant to petitioner such other, further and different relief as to the Court may seem just and proper.

AIR TRANSPORT ASSOCIATES, INC.,
By (S.) AMOS E. HEACOCK,
President.

WARREN E. MILLER,
910 17th Street, N. W.,
Washington, D. C.,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, ss:

Amos E. Heacock, being duly sworn, deposes and says that he is President of Air Transport Associates, Inc., the petitioner herein; that he has read the foregoing petition

and knows the contents thereof to be true; that the same is true to his knowledge except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true; that the reason why this verification is made by deponent and not by the petitioner is that the petitioner is a corporation and deponent is an officer thereof, to wit, the President.

(S.) AMOS E. HEACOCK.

Sworn to and subscribed before me this 7th day of February, 1951.

(S.) JOHN P. LABOFISH,
Notary Public,
District of Columbia.

EXHIBIT A

Orders
Serial Number E-4919

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD
Washington, D. C.

Adopted by the Civil Aeronautics Board at its office in
Washington, D. C. on the 8th day of December, 1950

Docket No. 4700

In the Matter of a Special Fare for Travel on Cargo Aircraft from Fairbanks, Alaska to Seattle, Washington proposed on behalf of PAN AMERICAN WORLD AIRWAYS, Inc., pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-4, C.A.B. No. 71 cancelling C.A.B. No. 64.

ORDER DENYING PETITION

Air Transport Associates, Inc. (hereinafter called Air Transport), having filed with the Board on November 15, 1950 a petition requesting the Board to reconsider Order Serial No. E-4743, adopted October 18, 1950 which dismissed the protest of Air Transport to the tariff of Pan American World Airways, Inc., providing a special one-way fare of \$75 for travel on cargo aircraft from Fairbanks, Alaska to Seattle, Washington, and requesting further that the Board reject the aforesaid tariff and institute an investigation to determine its lawfulness;

Air Transport having stated in support of said petition that the aforesaid order is legally deficient since the only reason stated therein for the dismissal of Air Transport's petition was that Air Transport's protest "does not state facts which warrant suspension or investigation or other action on its part and should be dismissed";

The Board upon consideration of Air Transport's petition and Air Transport's protest finding that:

1. Air Transport's protest and Air Transport's petition contain generalized allegations and conclusions but do not

include facts which would support the allegations and conclusions contained therein;

2. Neither the original protest nor the petition for reconsideration state facts which warrant any action by the Board and, therefore, the petition should be denied;

The Board acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly Sections 205(a) and 1002(a) thereof, and finding further that its action is necessary and appropriate to carry out the provisions of the Act and is required by the public interest;

It is ordered, that the petition of Air Transport Associates, Inc. be and it hereby is denied.

By the Civil Aeronautics Board:

(Seal.)

(S.) M. C. MULLIGAN,
Secretary.

EXHIBIT B

Orders
Serial Number E-4743

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD
Washington, D. C.

Adopted by the Civil Aeronautics Board at its office in
Washington, D. C. on the 8th day of October, 1950

Docket No. 4700

In the Matter of a Special Fare for Travel on Cargo Aircraft from Fairbanks, Alaska to Seattle, Washington proposed on behalf of PAN AMERICAN WORLD AIRWAYS, Inc., pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-4, C.A.B. No. 71 cancelling C.A.B. No. 64.

ORDER DISMISSING PROTEST

Air Transport Associates, Inc. having filed a protest requesting the Board to investigate and suspend the pro-

posed one-way fare of \$75 from Fairbanks, Alaska to Seattle, Washington, and the round-trip fare of \$162 between Fairbanks and Seattle as contained in Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-4, C.A.B. No. 71, filed on behalf of Pan American World Airways, Inc.;

The Board having considered the aforesaid protest, and finding that Pan American World Airways, Inc. has been permitted to cancel the aforesaid round-trip fare and that said protest does not state facts which warrant suspension or investigation or other action on its part and should be dismissed;

The Board, acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly Sections 205(a) and 1002(a) thereof, and finding that its action is necessary and appropriate to carry out the provisions of the Act and is required by the public interest;

It Is Ordered That:

The protest of Air Transport Associates, Inc. be and it hereby is dismissed.

By the Civil Aeronautics Board:

(S.) M. C. MULLIGAN,
Secretary.

(Seal.)

EXHIBIT C

BEFORE THE CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No. 4700

In the Matter of a Special Fare for Travel on Cargo Aircraft from Fairbanks, Alaska to Seattle, Washington proposed on behalf of PAN AMERICAN WORLD AIRWAYS, INC., pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Fares Tariff C.A.B. No. 71 cancelling C.A.B. No. 64.

PROTEST OF AIR TRANSPORT ASSOCIATES, INC.

Comes now Air Transport Associates, Inc. (hereinafter referred to as "Air Transport") and pursuant to Sections

2, 403, 404 and 1002 of the Civil Aeronautics Act, as amended (hereinafter referred to as the "Act") together with such other provisions thereof as may be applicable, and Section 302.15 of the Economic Regulations of the Civil Aeronautics Board (hereinafter referred to as the "Board"), complains to the Board as follows:

Pan American World Airways System (hereinafter referred to as "Pan American") has proposed a change in Agent Lounsbury's Local and Joint Passenger Tariff identified as C.A.B. No. 64, providing for special rules applicable to fares for travel on cargo aircraft between Fairbanks, Alaska and Seattle, Washington.

The proposed fares complained of herein provide for one way transportation as available on cargo aircraft southbound from Fairbanks, Alaska on cargo flights designated P.A. 910 and P.A. 912 in G.S., CAB-2 at seventy-five dollars (\$75.00).

Round trip fares are available at one hundred sixty-two dollars (\$162.00) on southbound cargo flights, as indicated for the one way cargo flight, on regularly scheduled passenger service.

The proposed fares and supporting rules are protested on the ground that they are without economic justification, as they are below the cost of operation and cannot be considered as promotional. Such fares, if allowed to become effective, would be unjust, unreasonable, unjustly discriminatory, unduly preferential and unduly prejudicial to the industry and the public.

Air Transport does not oppose low fare service between Alaska and the United States. In fact Air Transport and other large irregular air carriers operating without benefit of air mail subsidy have pioneered the low fare rates in this area. It is through the efforts of Air Transport and the large irregular air carriers that reasonable fares are available to the public between Seattle, Washington, and Fairbanks, Alaska.

Air Transport advocates economy and efficiency in air transportation and has furnished the public with economical and efficient service. Air Transport opposes Pan American's proposal because it would spread economic chaos

throughout the air transportation industry, hinder the progress of the non-subsidized air transportation industry and impose heavy burdens upon the Government and thereby the taxpayers, in the form of subsidy air mail pay.

Air Transport submits that such an operation would unduly divert traffic from normal-fare flights, inevitably result in expansion of low fare cargo passenger service by and through Fairbanks, Alaska, Seattle, Washington route, affecting the entire domestic air transportation system and debase the entire domestic fare structure.

The establishment of such fare would necessarily divert traffic from established services and not develop new traffic. The failure of Pan American to define "cargo air craft" results in an unfair, uncertain, discriminatory and arbitrary fare structure as well as illogical and unreasonable.

Air Transport further submits that such a fare would disrupt the present competitive balance and is most undesirable at this time of present emergency, when Air Transport industry is confronted with rising prices and wages and the diversion of aircraft.

It is readily apparent that Pan American's proposal is designed to accomplish the same purpose as that for a "space available" fare which the Board suspended and made the subject of the pending investigation under Docket No. 4508, the only difference being in the provision for round trip fares and the undefined type of aircraft referred to as "cargo Aircraft". There is obviously no substantial difference between the proposals.

Pan American's "space available" proposal now being the subject of a Board investigation under Docket 4508, it follows that the refileing of the same basic proposal with differences only as to form requires that the Board issue a corresponding order of investigation and suspension in connection with Pan American's latest proposal.

The Board has already found that a hearing is required to carry out the purposes of the Act, and the Board should reject Pan American's attempt to circumvent the investigation instituted by the Board and should continue with the investigation by suspending Pan American's proposal and consolidating it with the proceeding under Docket 4508

which was postponed indefinitely by order of the Board on September 7, 1950, in order that all the facts and circumstances underlying Pan American's proposal to cut, wastefully and uneconomically the prevailing air fare levels may be considered in terms of public interest. Air Transport respectfully requests that the Board take that action.

The Board has found that Pan American's basic proposal involved important policy consideration and that such an experiment should not proceed without investigation and study. It is therefore illogical and unwarranted for the Board now to resolve those questions without hearing, without evidence and without the mature consideration contemplated by the investigation. Therefore, the Board, should, as a matter of Policy suspend Pan American's proposal and institute an investigation thereof and consolidate the proceeding with the pending investigation under Docket 4508.

If Pan American sincerely desired consideration of its proposal on its merits and a full revelation of its implications, it could have requested a prompt and early hearing in the investigation proceeding under Docket No. 4508. Air Transport would not object to such hearing and Air Transport, in fact, requests a hearing at which the facts can be shown. In the alternative Pan American might have formally petitioned the Board to reconsider the Order Number E-4539 of August 23, 1950, suspending its tariff. But Pan American took neither of those logical courses and instead refiled its tariff without substantial difference. It is plain that Pan American does not desire, and is attempting to evade, full, fair and complete consideration of its proposal. Pan American's action is merely a sham and a subterfuge and Air Transport is confident the Board will not indulge Pan American's circumventual tactics.

It should be apparent to Pan American that a fare structure for the air transportation industry can not be based on passengers being transported in "so called" cargo aircraft. Obviously, different fares would have to be established for each type of aircraft which would further hinder the natural development of air transportation.

Finally, the Board has before it for decision the matter of

the adequacy of cargo service between the United States and the Territory of Alaska and application for certificates or amendments of certificates of public convenience and necessity known as the United States-Alaska Service Case Docket No. 3286 et al. The rate structure of the carriers presently operating between the United States and Alaska should not be radically changed until a decision has been reached in this case.

WHEREFORE, Air Transport asks that the Board suspend Pan American's proposed new fares, rules and regulations appearing on Agent Lounsbury's Local and Joint Passenger Tariff identified as C. A. B. No. 64 and institute an investigation into lawfulness thereof pursuant to Section 1002 of the Act.

Respectfully,

(S.) JOHN J. KLAK,
*Attorney for Air Transport
Associates, Inc.*

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Protest has been mailed, postage prepaid, and properly addressed to all known parties to the proceeding.

Dated: October 3, 1950.

(S.) JOHN J. KLAK,
*Attorney for Air Transport
Associates, Inc.*

EXHIBIT D

BEFORE THE CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No. 4700

In the Matter of a Special Fare for Travel on Cargo Aircraft from Fairbanks, Alaska to Seattle, Washington proposed on behalf of PAN AMERICAN WORLD AIRWAYS, Inc., pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Fares Tariff C.A.B. No. 71 cancelling C.A.B. No. 64.

PETITION OF AIR TRANSPORT ASSOCIATES, INC. FOR RECONSIDERATION OF ORDER DISMISSING PROTEST OF PROPOSED TARIFF CHANGE

Now comes Air Transport Associates, Inc. (hereinafter called Air Transport) pursuant to Section 302.11 (3) (c) of the Rules of Practice in Economic Proceedings, and petitions the Civil Aeronautics Board (hereinafter referred to as the Board) to reconsider its Order (Serial No. E-4743, adopted October 18, 1950) dismissing the Protest of Air Transport to the tariff of Pan American World Airways System (hereinafter called Pan American) which provides a Special Fare for Travel on Cargo Aircraft under which passengers are transported for \$75.00 one way from Fairbanks, Alaska to Seattle, Washington.

In support of its Motion Air Transport states as follows:

1. The Board's Order, Serial No. E-4743, is legally deficient insofar as it dismisses the Protest of Air Transport without setting forth any reason for such dismissal. The Board's Order fails to state any reason for the dismissal of Air Transport's protest except to recite in general terms that the "Protest does not state facts which warrant suspension or investigation or other action." Air Transport respectfully submits that such a bare recitation of dismissal does not constitute a statement of the reasons for dismissal. Since broad generalities are the only grounds for dismissal

of the Order, to contend that the recital of such generalities in the Order as a statement of reasons, is to dismiss a bona fide protest of a Carrier over whom the Board has exercised its authority, without considering and stating concisely and clearly its position with respect to the reasons set forth in the Protest. The terms and provisions of the Board's Order while carrying the full weight and effect of the Board as a dismissal, with only meaningless phrases to support the entry of such Order carries the inference that the Board has no reasons to dismiss the Protest.

2. Air Transport respectfully submits that in its Protest filed October 3, 1950 it alleged the following facts which have not been answered by the Board either by hearing or on the record in its Order:

"The proposed fares and supporting rules are protested on the ground that they are without economic justification, as they are below the cost of operation and cannot be considered as promotional. Such fares, if allowed to become effective, would be unjust, unreasonable, unjustly discriminatory, unduly preferential and unduly prejudicial to the industry and the public.

"Air Transport does not oppose low fare service between Alaska and the United States. In fact Air Transport and other large irregular air carriers operating without benefit of air mail subsidy have pioneered the low fare rates in this area. It is through the efforts of Air Transport and the large irregular air carriers that reasonable fares are available to the public between Seattle, Washington, and Fairbanks, Alaska.

"Air Transport opposes Pan American's proposal because it would spread economic chaos throughout the air transportation industry, hinder the progress of the nonsubsidized air transportation industry and impose heavy burdens upon the Government and thereby the taxpayers, in the form of subsidy air mail pay.

"Air Transport submits that such an operation would unduly divert traffic from normal-fare flights,

inevitably result in expansion of low fare cargo passenger service by and through Fairbanks, Alaska, Seattle, Washington route, affecting the entire domestic air transportation system and debase the entire domestic fare structure.

"The establishment of such a fare would necessarily divert traffic from established services and not develop new traffic. The failure of Pan American to define "cargo air craft" results in an unfair, uncertain, discriminatory and arbitrary fare structure as well as illogical and unreasonable.

"Air Transport further submits that such a fare would disrupt the present competitive balance and is most undesirable at this time of present emergency, when Air Transport industry is confronted with rising prices and wages and the diversion of aircraft."

3. The Board's Order fails to justify the economic loss resulting from the reduction in fares, and fails to explain the impossibility of a reasonable increase in the volume of passenger traffic in order to make up the loss. The Board fails to explain the unjust, discriminatory and unduly prejudicial character of the double system of fares which complicate the Pan American tariff which is protested herein;

4. The Order fails to state the economic justification for allowing Pan American a tariff which is below its cost of operation, and is not promotional in character;

5. The Board has failed, in its Order, to answer Air Transport's Protest with respect to this tariff as it is affected or would be affected had consideration of the U. S. Alaska Service case Docket No. 3286 et al., been decided;

6. Inasmuch as the Board's Order fails to explain, or examine on the record, any of the facts and circumstances set forth in the Protest of Air Transport, it is necessary that speculations and presumptions be entertained in order to determine the substantive reasons the Board may have had for its action.

7. The Board in its order, and Pan American in its tariff, have failed to identify the character of the transportation which will be used under the Special Fare for Travel on

Cargo Aircraft tariff. It is obvious that a plush transport with an empty seat is not a cargo plane and should not be so considered for purposes of a tariff. It is also obvious that a cargo plane with bucket seats can not be considered as a passenger vehicle for purposes of a Special Fare for Travel on Cargo Aircraft tariff. As a matter of fact, Pan American transports a quantity of cargo on all flights, thereby adding further uncertainty in the differentiation between passenger and cargo aircraft. In view of the foregoing it is highly speculative as to just what services the public is entitled to under the tariff as proposed by Pan American and approved by the Board. Furthermore, the fare is discriminatory and violates Section 404 (b) of the Civil Aeronautics Act of 1938, which provides as follows:

“(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”

8. Finally, the Special Fare for Travel on Cargo Aircraft proposed on behalf of Pan American is identical in effect with a previously proposed Space Available Fare of \$75.00 from Fairbanks, Alaska to Seattle, Washington, which was duly considered by the Board and dismissed by Order Number E-4675, dated September 29, 1950, in Docket No. 4508.

Wherefore, Air Transport respectfully prays that the Civil Aeronautics Board reject Pan American's proposed tariff C.A.B. No. 71 and enter upon an investigation for the purpose of examining the reasonableness, lawfulness and effect of the fare proposed therein for the reasons set forth in the Protest of Air Transport Associates and in view of the present rules of the Board, and pending completion of such investigation, the Board suspend the opera-

tion of said tariff and defer the use thereof, and that the Board grant to Air Transport Associates, Inc. such other and further relief as the Board shall deem proper.

Respectfully submitted,

AIR TRANSPORT ASSOCIATES, INC.

By (s.) JOHN J. KLAK,

Attorney for Air Transport Associates, Inc.

November 14, 1950.

EXHIBIT E

COMPARATIVE EFFICIENCY

OF INDEPENDENT AND CERTIFICATED CARRIERS SERVING ALASKA
EXPRESSED IN CENTS PER REVENUE POUND FOR A DISTANCE OF 1560 MILES (SEATTLE-ANCHORAGE)

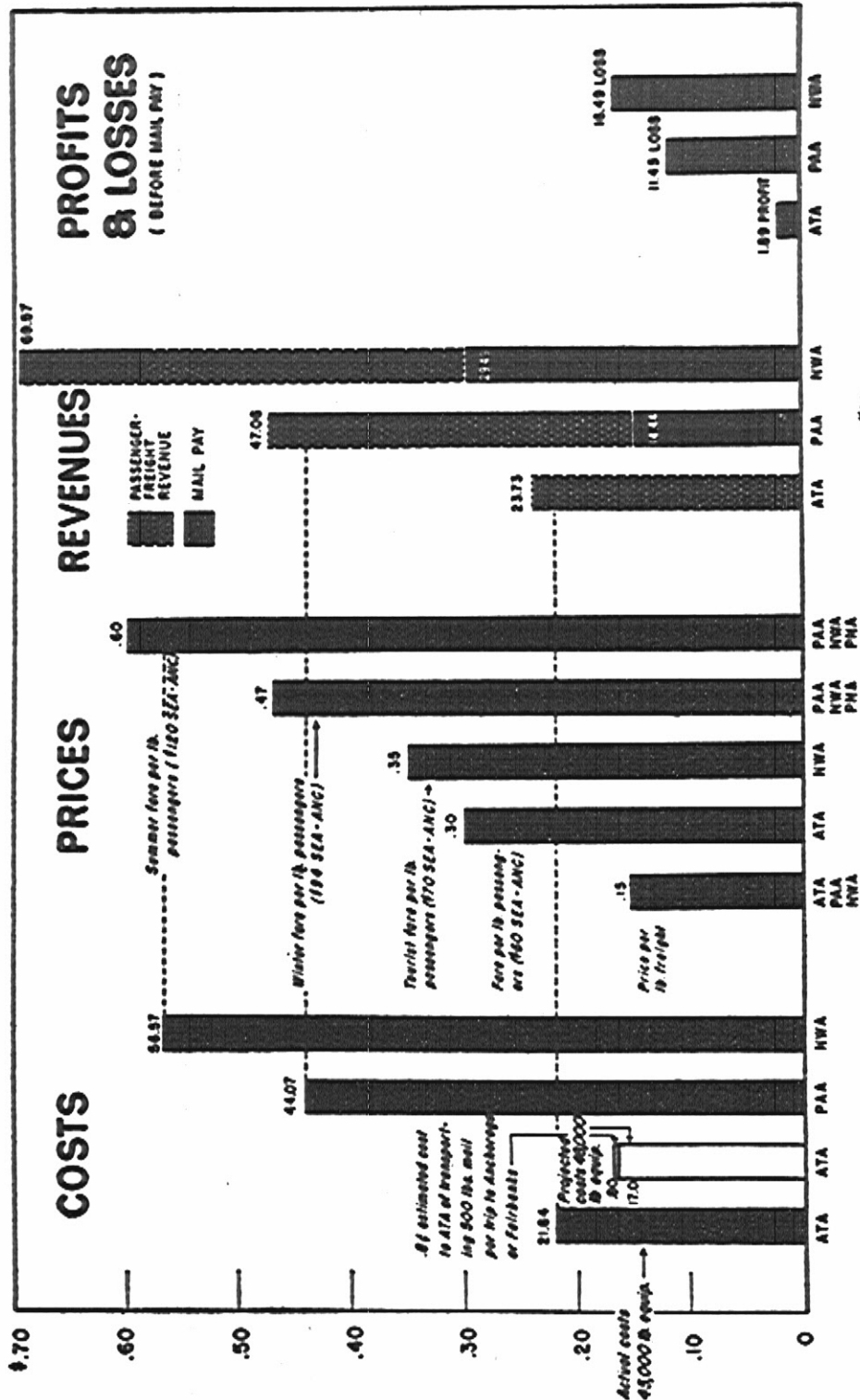


EXHIBIT F

APPENDIX D APPEARING IN THE TESTIMONY OF AMOS E. HEACOCK, PRESIDENT, INDEPENDENT AIR CARRIER CONFERENCE, AT PAGE 180 OF HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, HOUSE OF REPRESENTATIVES, EIGHTY-FIRST CONGRESS, SECOND SESSION ON H. R. 2908 AND H. J. RES. 331.

APPENDIX D.—Effect of hidden air-mail subsidy on unsubsidized competition: Alaska example—comparative statement, air-carrier revenues, expenses, net incomes, and effect of air-mail pay on net incomes in cents per revenue ton-mile and in cents per revenue pound for 1560 miles (Seattle-Anchorage) for the 9 months ended Sept. 30, 1949.

	Operating revenues		Total operating expense		Net operating income		Deduct mail pay		Net operating income excluding mail pay	
	Per ton-mile (1)	Per pound (2)	Per ton-mile (3)	Per pound (4)	Per ton-mile (5)	Per pound (6)	Per ton-mile (7)	Per pound (8)	Per ton-mile (9)	Per pound (10)
Air Transport Associates, Inc. ¹	30.43	23.73	28.00	21.84	2.43	1.89	.....	.....	2.43	1.89
Pan American Alaska division.....	60.33	47.06	56.50	44.07	3.83	2.99	18.51	14.44	-14.68	-11.45
Northwest Airlines international division.....	89.19	69.57	72.53	56.57	16.66	13.00	37.80	29.49	-21.14	-16.49
Pacific Northern Airlines.....	121.50	94.77	121.77	94.98	- .27	- .21	30.71	23.95	-30.98	-24.16

¹ Computed from carrier's accounts and statistical data for the 10-month period ended October 31, 1949.

Source: For all carriers except Air Transport Associates, Inc., Civil Aeronautics Board, Bureau of Economic Regulation, Accounting and Rates Division, recurrent reports of financial data and carriers' Form 41 reports.

EXHIBIT G

APPENDIX A.—Comparative statement of carriers' income and expenses

[In cents per revenue-mile]

	Oper- ating re- venues	Direct aircraft oper- ating ex- penses	General and in- direct ex- penses	Total oper- ating ex- penses	Net oper- ating income	Deduct mail pay	Net op- erating income exclud- ing mail pay
Air Transport Associates, Inc.:							
Month of April 1949.....	102.25	50.95	15.77	66.72	35.53	.....	35.53
Percent total operating ex- pense.....		(76.4)	(23.6)	(100)	.....	.....	.....
Pan American Airways, Alaska division:							
3 months ending June 10, 1949.....	219.21	94.64	111.77	206.41	12.80	89.75	-76.95
Percent total operating ex- pense.....		(45.8)	(54.2)	(100)	.....	.....	.....
Northwest Airlines, international operations:							
3 months ending June 30, 1949.....	258.19	115.13	127.64	241.77	16.42	112.92	-96.50
Percent total operating ex- pense.....		(47.2)	(52.8)	(100)	.....	.....	.....
All scheduled air lines, interna- tional operations:							
3 months ending June 30, 1949.....	254.16	112.78	126.03	238.81	15.35	57.76	-42.41
Percent total operating ex- pense.....		(46.9)	(53.1)	(100)	.....	.....	.....
Eastern Airlines, international operations:							
3 months ending June 30, 1949.....	133.04	70.98	65.42	136.40	-3.36	3.84	-7.20
Percent total operating ex- pense.....		(52)	(48)	(100)	.....	.....	.....
All scheduled air lines, domestic operations:							
3 months ending June 30, 1949.....	129.37	58.96	67.93	126.89	2.48	11.49	-9.01
Percent total operating ex- pense.....		(46.5)	(53.5)	(100)	.....	.....	.....
Eastern Air Lines, domestic op- erations:							
3 months ending June 30, 1949.....	133.48	65.11	57.87	122.98	10.50	3.74	6.76
Percent total operating ex- pense.....		(53)	(47)	(100)	.....	.....	.....

APPENDIX B.—Comparative statement of carriers' income and expense

[In cents per revenue ton-mile]

	Operating revenues	Direct aircraft operating expenses	General and in- direct ex- penses	Total operating ex- penses	Net operating income	Deduct mail pay	Net operating income excluding mail pay
Air Transport Associates, Inc.: Month of April 1949.....	33.48	16.69	5.16	21.85	11.63	.....	11.63
Percent total operating ex- pense.....		(76.4)	(23.6)	(100)	.....	.....	.....
Pan American Airways, Alaska division:							
3 months ending June 30, 1949.....	81.76	35.30	41.69	76.99	4.77	33.48	-28.71
Percent total operating ex- pense.....		(46)	(54)	(100)	.....	.....	.....
Northwest Airlines, international operations:							
3 months ending June 30, 1949.....	125.23	55.36	61.91	117.27	7.96	54.77	-46.81
Percent total operating ex- pense.....		(47.2)	(52.8)	(100)	.....	.....	.....
All scheduled air lines, interna- tional operations:							
3 months ending June 30, 1949.....	91.98	40.82	45.61	86.43	5.55	20.90	-15.35
Percent total operating ex- pense.....		(47.1)	(52.9)	(100)	.....	.....	.....
Eastern Airlines, international operations:							
3 months ending June 30, 1949.....	45.56	24.31	22.40	46.71	1.15	1.32	-2.47
Percent total operating ex- pense.....		(52)	(48)	(100)	.....	.....	.....
All scheduled air lines, domestic operations:							
3 months ending June 30, 1949.....	57.72	26.30	30.31	56.61	1.11	5.13	-4.02
Percent total operating ex- pense.....		(46.3)	(53.7)	(100)	.....	.....	.....
Eastern Airlines, domestic oper- ations:							
3 months ending June 30, 1949.....	58.43	28.50	25.33	53.83	4.60	1.64	-2.96
Percent total operating ex- pense.....		(53)	(47)	(100)	.....	.....	.....

APPENDIX C.—Comparative statement of carriers' income and expense

[In cents per available ton-mile]

	Operating revenues	Direct aircraft operating expenses	General and in- direct expenses	Total operating expenses	Net operating income	Deduct mail pay	Net operating income excluding mail pay
Air Transport Associates, Inc.:							
Month of April 1949.....	20.05	9.99	3.09	13.08	6.97	.....	6.97
Percent total operating expense.....		(76.4)	(23.6)	(100)	.....	.....	.....
Pan American Airways, Alaska division:							
3 months ending June 30, 1949.....	40.92	17.67	20.86	38.53	2.39	16.76	-14.37
Percent total operating expense.....		(45.8)	(54.2)	(100)	.....	.....	.....
Northwest Airlines, international operations:							
3 months ending June 30, 1949.....	69.34	30.65	34.28	64.93	4.41	30.33	-25.92
Percent total operating expense.....		(47.3)	(52.7)	(100)	.....	.....	.....
All scheduled air lines, international operations:							
3 months ending June 30, 1949.....	52.70	23.39	26.13	49.52	3.18	11.98	-8.80
Percent total operating expense.....		(47.1)	(52.9)	(100)	.....	.....	.....
Eastern Air Lines, international operations:							
3 months ending June 30, 1949.....	20.93	11.17	10.29	21.46	-.53	.60	-1.13
Percent total operating expense.....		(52)	(48)	(100)	.....	.....	.....
All scheduled air lines, domestic operations:							
3 months ending June 30, 1949.....	31.32	14.28	16.44	30.72	.60	2.78	-2.18
Percent total operating expense.....		(46.5)	(53.5)	(100)	.....	.....	.....
Eastern Air Lines, domestic operations:							
3 months ending June 30, 1949.....	28.68	13.99	12.43	26.42	2.26	.80	1.46
Percent total operating expense.....		(52.9)	(47.1)	(100)	.....	.....	.....

APPENDIX D.—Air-cargo traffic carried, year ending Aug. 31, 1948

[Weight in pounds]

NORTH-BOUND TO ALASKA

	PAA	NWA	Total scheduled air lines	Alaska air lines	Other non- scheduled	Total non- scheduled air lines	Total all carriers
Anchorage area.....	81,411	362,477	443,888	2,843,973	3,306,904	6,150,877	6,594,765
Fairbanks area.....	3,087,127	.....	2,087,127	873,875	1,048,158	1,922,033	4,009,160
Southeastern area.....	541,597	.....	541,597	.....	482,894	482,894	1,024,491
Total Alaska.....	2,710,135	362,477	3,072,612	3,717,848	4,837,956	8,555,804	11,628,416
Comparison of scheduled and nonscheduled.....	.....	.....	3,072,612	.....	.....	8,555,804	11,628,416
Percentage of scheduled and nonscheduled.....	.....	.....	26.4	.....	.....	73.6	100

SOUTH-BOUND FROM ALASKA

Anchorage area.....	3,732	19,640	23,372	610,693	596,676	1,207,369	1,230,741
Fairbanks area.....	215,201	.....	215,201	89,225	116,817	206,042	421,243
Southeastern area.....	44,135	.....	44,135	.....	32,711	32,711	76,846
Total Alaska.....	263,068	19,640	282,708	699,918	746,204	1,446,122	1,728,830
Comparison of scheduled and nonscheduled.....	.....	.....	282,708	.....	.....	1,446,122	1,728,830
Percentage of scheduled and nonscheduled.....	.....	.....	16.5	.....	.....	83.5	100

(2777)

Orders

Serial Number E-4256

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board at its office in
Washington, D. C., on the 26th day of May, 1950

In the matter of a space available fare, and rules and
regulations in connection therewith, from Fairbanks,
Alaska to Seattle, Washington, proposed on behalf of
PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and Joint
Passenger Tariff No. P-AC-1, C. A. B. No. 54.

Docket No. 4508

Order of Investigation and Suspension

Agent R. C. Lounsbury having filed with the Board his
Local and Joint Passenger Tariff No. P-AC-1, C. A. B.
No. 54, on behalf of Pan American World Airways, Inc.,
proposing a space available fare of \$75 from Fairbanks,
Alaska to Seattle, Wash., and rules and regulations ap-
plicable thereto;

The Board having considered the aforesaid fare, and
rules and regulations in connection therewith, and it ap-
pearing to the Board that they may be unjust or unrea-
sonable, unjustly discriminatory, or unduly preferential,
or unduly prejudicial; and

The Board acting upon its own initiative and pursuant
to the powers vested in it by the Civil Aeronautics Act
of 1938, as amended, particularly Sections 205(a), 403,
404 and 1002 thereof, and finding that its action herein
is necessary and appropriate in order to carry out the

provisions and objectives of the Act, and to exercise and perform its powers and duties thereunder;

10 IT IS ORDERED THAT:

1. An investigation be and it hereby is instituted to determine whether the space-available fare of \$75 from Fairbanks, Alaska to Seattle, Wash., and all rules and regulations in connection therewith, appearing on Page 4 of Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54, are or will be unjust or unreasonable, unjustly discriminatory, or unduly preferential, or unduly prejudicial;

2. Pending such investigation, hearing and decision by the Board, the aforesaid fare, and rules and regulations applicable thereto, contained in the tariff hereinabove referred to, be and they hereby are suspended and their use deferred from June 1, 1950 to August 29, 1950, inclusive, unless otherwise ordered by the Board, and that no changes whatsoever be made therein during the period of suspension, except by order or special permission of the Board;

3. The proceeding ordered herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated;

4. A copy of this order be filed with the aforesaid tariff and a copy hereof be served upon Pan American World Airways, Inc., which is hereby made a party to this proceeding.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

Before the
CIVIL AERONAUTICS BOARD
Washington, D. C.

In the Matter of the Space Available Fare proposed by
PAN AMERICAN WORLD AIRWAYS SYSTEM

pursuant to Agent R. C. Lunsbury's Local and Joint
Passenger Tariff No. P-AC-1, C. A. B. No. 54

Docket No.

Protest of Air Transport Associates, Inc.

Pan American World Airways System (hereinafter referred to as "Pan American") has proposed a change in Agent Lunsbury's Local and Joint Passenger Tariff No. P-AC-1 identified as C. A. B. No. 54, providing for Space Available Fare to be effective June 1, 1950, under which passengers would be transported at seventy five dollars one way from Fairbanks, Alaska to Seattle, Washington. The present fare would continue to apply if space is not available.

Air Transport Associates (hereinafter referred to as "Air Associates") protests this proposal and requests its suspension under Section 1002(g) of the Civil Aeronautics Act. If such a fare were permitted to go into effect it would result in a loss of revenue without any reasonable possibility of increasing the volume of passenger traffic carried to make up for the loss. It is apparent that as long as space was available all passengers would be entitled to the reduced rate transportation irrespective of reservations made in advance at the higher fare. Moreover, the double system of fares would complicate the present transportation notwithstanding that it would be unjustly discriminatory, or unduly prejudicial, or unduly preferential.

Air Associates submits that the proposed fare of Pan

13 American is without economic justification as it is below cost of operation and can not be considered as promotional. The peak of season for passenger travel between Alaska and United States occurs at this time of year and therefore the only traffic that would be obtained is a serious diversion from regular fare service.

The Board has under consideration the U. S. Alaska Service Case, Docket No. 3286 et al, and until a decision is reached in that case the competitive balance among the carriers operating between the United States and Alaska should be maintained. The necessity of suspending the operation of an experimental tariff while this important decision is pending cannot be over-emphasized.

WHEREFORE, Air Associates respectfully prays that the Civil Aeronautics Board enter upon an investigation of Pan American's proposed tariff C. A. B. No. 54 for the purpose of examining the reasonableness, lawfulness and the effect of the fare proposed therein and pending completion of such investigation, the Board suspend the operation of said tariff and defer the use thereof, and that the Board grant to Air Associates such other and further relief as the Board may deem proper.

Respectfully submitted,
AIR TRANSPORT ASSOCIATES, INC.

By /s/ John J. Klak
John J. Klak
Attorney for
Air Transport Associates, Inc.

May 29, 1950

14

Verification

JOHN J. KLAKE, being first duly sworn, deposes and says: That he is Attorney for AIR TRANSPORT ASSOCIATES, INC., that he has read and is familiar with the contents of the foregoing protest; that he intends and desires that in granting or denying the rights and privileges applied for, the Board shall place full and

complete reliance on the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief, every statement contained in the said protest is true, and no such statement is misleading; and that in his opinion the said protest does not omit to state facts known which would be deemed by the Board to be of importance to it on reaching its determinations in connection therewith.

By /s/ John J. Klak
John J. Klak

Subscribed and sworn to before me this 29th day of May, 1950.

(SEAL)

/s/ Virginia S. Breen
Notary Public in and for the
District of Columbia

My commission expires April 14, 1954.

Certificate of Service

It is hereby certified that a copy of the foregoing Protest has been mailed postage prepaid, and properly addressed to all known parties to the proceeding.

/s/ John J. Klak
John J. Klak
Attorney for

AIR TRANSPORT ASSOCIATES, INC.

Dated: May 29, 1950.

* * * *

19

Received Docket Section
Jun 16 3:08 PM '50 Civil Aeronautics Board

Before the
CIVIL AERONAUTICS BOARD
Washington, D. C.

In the matter of a Space Available Fare and rules and regulations in connection therewith, from Fairbanks, Alaska to Seattle, Washington, proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to agent R. C. Lunsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54.

Docket Nos. 4502, 4508.

Supplemental Protest of Air Transport Associates, Inc.

Pan American Airways System (hereinafter referred to as "Pan American") has proposed, through agent R. C. Lunsbury, Local and Joint Passenger Tariff No. P-AC-2, identified as C. A. B. No. 63, cancelling C. A. B. No. 54, providing for Space Available Fare to be effective July 1, 1950, under which passengers would be transported at \$75.00 one way from Fairbanks, Alaska, to Seattle, Washington. The proposed tariff C. A. B. No. 63, as regards the Space Available Fare, is identical with Tariff C. A. B. No. 54 except that its effective date is July 1, 1950 instead of June 1, 1950.

Air Transport Associates, Inc. (hereinafter referred to as "Air Associates") filed a protest to the proposed Space Available Fare in C. A. B. No. 54 under Docket No. 4502 and requested its suspension under Section 1002(g) of the Civil Aeronautics Act.

The Civil Aeronautics Board (hereinafter referred to as "Board") has suspended the Space Available \$75.00 tariff C. A. B. No. 54, and by order E-4256, Docket No. 4508, ordered that

"Pending investigation, hearing and decision by the Board the aforesaid fare, and rules and regulations applicable thereto contained in the tariff hereinafter referred to, be and they hereby are suspended and their use deferred from June 1, 1950 to August 29, 1950, inclusive, unless otherwise ordered by the Board, and that no changes whatsoever be made during the period of suspension except by order or special permission of the Board."

20 Notwithstanding the Board's Order suspending Tariff C. A. B. No. 54, Pan American has filed a

Space Available Tariff C. A. B. No. 63 identical with C. A. B. No 54 except that C. A. B. No. 63 is proposed to be effective July 1, 1950, a month later than the prior filing.

WHEREFORE, Air Associates respectfully prays that the Civil Aeronautics Board reject Pan American's proposed tariff C. A. B. No. 63 and enter upon an investigation for the purpose of examining the reasonableness, lawfulness and effect of the fare proposed therein for the reasons stated in the Protest of Tariff C. A. B. No. 54, Docket No. 4502, and pending completion of such investigation the Board suspend the operation of said tariff and defer the use thereof, and that the Board grant to Air Associates such other and further relief as the Board may deem proper.

Respectfully submitted,
AIR TRANSPORT ASSOCIATES, INC.

By /s/ John J. Klak
John J. Klak
Attorney for
Air Transport Associates, Inc.

June 16, 1950

Certificate of Service

It is hereby certified that a copy of the foregoing Protest has been mailed postage prepaid, and properly addressed to all known parties to the proceeding.

/s/ John J. Klak
John J. Klak
Attorney for
Air Transport Associates, Inc.

Dated: June 16, 1950.

21 Received Civil Aeronautics Board
(Tariffs)
9447 Jun 21 '50 Tariffs and Service Division

Supplement No. 1 to C. A. B. No. 54
Official File
R. C. LOUNSBURY, AGENT
Supplement No. 1 to
LOCAL AND JOINT PASSENGER TARIFF No. P-AC-1
Participating Carriers are as Shown in Tariff
Naming
ALL YEAR ONE WAY and ROUND TRIP FARES
In U. S. Cy.

Between Points in the UNITED STATES on the one
hand and Points in ALASKA on the other hand

Between Points in ALASKA

Between Points in the UNITED STATES on the one
hand and Points in CANADA on the other hand

Between Points in ALASKA on the one hand and
Points in CANADA on the other hand
and

Space available fare from Fairbanks, Alaska to
Seattle Washington, U. S. A.

Issued under authority of Section 222.5, of the Economic
Regulations of the Civil Aeronautics Board.

This Supplement will expire with August 29, 1950 unless
sooner charged, cancelled or extended.

ISSUED: JUNE 21, 1950.
Issued by: R. C. LOUNSBURY, AGENT
PAN AMERICAN WORLD AIRWAYS SYSTEM
28-19 Bridge Plaza North,
Long Island City 1, N. Y.

22 IT IS ORDERED THAT:

1. An investigation be and it hereby is instituted to determine whether the space available fare of \$75 from Fairbanks, Alaska to Seattle, Wash., and all rules and regulations in connection therewith, appearing on Page 4 of Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54, are or will be unjust or unreasonable, unjustly discriminatory, or unduly preferential, or unduly prejudicial;

2. Pending such investigation, hearing and decision by the Board, the aforesaid fare, and rules and regulations applicable thereto, contained in the tariff hereinabove referred to, be and they hereby are suspended and their use deferred from June 1, 1950 to August 29, 1950 inclusive, unless otherwise ordered by the Board, and that no changes whatsoever be made therein during the period of suspension, except by order or special permission of the Board;

3. The proceeding ordered herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated.

* * * *

27

Orders

Serial Number E-4469

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 28th day of July, 1950.

In the matter of a space available fare, and rules and regulations in connection therewith, from Fairbanks, Alaska to Seattle, Washington, proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54.

Docket No. 4508

Order

Air Transport Associates, Inc. (Transport) having filed with the Board a protest requesting investigation and suspension of the space available fare of \$75.00 from Fairbanks, Alaska to Seattle, Washington, filed on behalf of Pan American World Airways, Inc. (Pan American) by Agent R. C. Lounsbury in his Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54;

Transport having filed a supplemental protest requesting the Board to reject Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-2, C. A. B. No. 63 filed on behalf of Pan American;

The Board having considered the aforesaid protests and the aforesaid tariffs and it appearing to the Board that:

1. Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-2, C. A. B. No. 63 has been cancelled and the supplemental protest insofar as it applies to that tariff is moot;

2. By Order Serial No. E-4256, adopted May 26, 1950, the Board instituted a proceeding of investigation and suspension of Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54 (Docket No. 4508);

3. The protest and supplemental protest of Transport assigned Docket Nos. 4502 and 4508 insofar as they apply to the aforesaid space available fare from Fairbanks to Seattle contained in Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54 should be consolidated into Docket No. 4508 so that the several basic issues which the protests and that proceeding have in common, may be tried more effectively and expeditiously;

The Board acting pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, par-

ticularly sections 205(a), 403, 404, and 1002 thereof, and finding that its action is necessary and appropriate in order to carry out the provisions and objectives of the Act, and to exercise and perform its powers and duties thereunder;

IT IS ORDERED THAT:

1. The protest and supplemental protest of Air Transport Associates, Inc. assigned Docket Nos. 4502 and 4508 insofar as they apply to the \$75.00 space available fare from Fairbanks, Alaska to Seattle, Washington contained in Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54 be and they hereby are consolidated into the proceeding of investigation and suspension bearing Docket No. 4508 and this consolidated proceeding is assigned for hearing before an examiner of the Board at a time and place hereafter to be designated;

2. Air Transport Associates, Inc. and Pan American World Airways, Inc., be and they hereby are made parties to this consolidated proceeding; and

3. Except as hereinbefore and in Order Serial No. E-4256 ordered the aforesaid protest and supplemental protest of Air Transport Associates, Inc., be and are hereby denied.

By the Civil Aeronautics Board:

/s/ Fred A. Toombs
Fred A. Toombs
Acting Secretary

(SEAL)

29

CIVIL AERONAUTICS BOARD
Washington 25
PAN AMERICAN WORLD AIRWAYS, INC.
Docket No. 4508

July 19, 1950

Prehearing Conference

Notice to All Interested Persons:

A prehearing conference in the above-entitled matter involving an investigation instituted by the Board by Order Serial No. E-4256, is hereby assigned to be held on August 1, 1950, at 10:00 a. m. (eastern daylight saving time) in Room C-116, Temporary Building No. 5, 16th Street and Constitution Avenue, N. W., Washington, D. C., before Examiner R. Vernon Radcliffe.

/s/ Francis W. Brown
Francis W. Brown
Chief Examiner

30

CIVIL AERONAUTICS BOARD
Washington 25
PAN AMERICAN WORLD AIRWAYS, INC.
Docket No. 4508

July 27, 1950

Notice to All Interested Persons:

Pursuant to the request of Counsel for Pan American Airways, the prehearing conference in the above-entitled proceeding is hereby postponed from August 1 to August 14, 1950. The conference will be held at 10:00 a. m. (eastern daylight saving time) in Room C-116 Temporary Building No. 5, 16th Street and Constitution Avenue, N. W., Washington, D. C., before Examiner F. Merritt Ruhlen.

/s/ Francis W. Brown
Francis W. Brown
Chief Examiner

31

Received Docket Section
Jul 28 10:50 AM '50 Civil Aeronautics Board

Before the
CIVIL AERONAUTICS BOARD
Washington, D. C.

In the matter of a space available fare, and rules and regulations in connection therewith, from Fairbanks, Alaska to Seattle, Washington, proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54.

Docket No. 4508

Motion to Dismiss

Communications with respect to
this motion should be sent to:

HENRY J. FRIENDLY
Vice President and General Counsel
Pan American World Airways, Inc.
135 East 42nd Street
New York 17, N. Y.

Dated: New York, July 27, 1950

32

Before the
CIVIL AERONAUTICS BOARD
Washington, D. C.

In the matter of a space available fare, and rules and regulations in connection therewith, from Fairbanks, Alaska to Seattle, Washington, proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54.

Docket No. 4508

Motion to Dismiss

NOW COMES PAN AMERICAN WORLD AIRWAYS, INC. (hereinafter called "Pan American") and respectfully moves the Board to dismiss the above proceeding and to rescind and set aside its Order of Investigation and Suspension, Serial No. E-4256, heretofore entered herein on the 26th day of May, 1950 and as reasons for such motion respectfully represents unto the Board as follows:

1. The aforesaid Order purports to institute an investigation concerning the lawfulness of, and to suspend until August 29, 1950, the fares, rules, and regulations contained in Agent R. C. Lounsbury's Local Passenger Tariff No. P-AC-1, C. A. B. No. 54 proposing on behalf of Pan American, a space available fare of \$75 from Fairbanks, Alaska to Seattle, Washington. For reasons hereinafter set forth, Pan American respectfully submits that:

(a) the fares, rules and regulations contained in the said Tariff are lawful,

(b) The Order of Investigation and Suspension is legally defective and was invalidly entered,

(c) all issues with respect to the lawfulness of the Tariff may be determined upon the instant Motion to Dismiss, thereby rendering the contemplated investigation unnecessary.

33 2. The aforesaid Tariff, a copy of which is annexed hereto as Exhibit "A", proposes the sale and use of tickets, on a space available basis, for air transportation performed by Pan American southbound between Fairbanks, Alaska and Seattle, Washington. As provided in the tariff, tickets will be on sale in Fairbanks only and will be valid solely for southbound transportation to Seattle; transportation purchased under this fare will not carry with it the privilege of advance reser-

vations since passengers will be accepted for travel subject to space being available at the time of departure of the aircraft from Fairbanks; no stopover privileges will accrue under the terms of the tariff; and if it becomes necessary to offload any passengers or cargo, passengers and their baggage traveling at the space available fare will be removed before any full rate traffic. This tariff was promulgated as an essential defensive measure against the uncontrolled non-certificated competition which heretofore has diverted and is continuing to divert important revenues from Pan American's certificated Alaskan operations.

3. The establishment of a fare between Seattle and Fairbanks which will enable Pan American effectively to retain and obtain its traffic, which is being diverted by the cut-rate services offered by the non-certificated carriers operating between those points, has been made imperative by the shift in the activities of such carriers from Anchorage to Fairbanks. Until late in 1948, the principal so-called "non-scheduled", "irregular" or "contract" operations were largely concentrated on the Seattle-Anchorage route of Northwest Airlines, Inc. Effective December 23, 1948 Northwest was permitted to establish a tourist fare of \$70 between Anchorage and Seattle. Almost immediately, and at an accelerated rate

34 thereafter, the numerous and frequent non-certificated operators transferred from Anchorage to Fairbanks as their principal point of operations in Alaska. At present Pan American's regular southbound fare, between Fairbanks and Seattle is \$105, while the non-scheduled carriers advertise a southbound fare, between Fairbanks and Seattle, of \$65. Golden North, Arnold Air Service, Air Transport Associates and New England Airways are among the non-certificated carriers presently offering service between Fairbanks and Seattle. During the later part of June and the beginning of July, 1950 their combined frequencies averaged, southbound, between

three and four trips per week, with every indication of increasing frequencies. The operations which such carriers are now conducting and the increases in their frequencies which may be expected when additional traffic is available will allow the non-certificated carriers seriously to divert the peak southbound passenger traffic which moves during the latter part of July and the months of August and September.

In May, 1948, non-scheduled operators carried 233 passengers to the Fairbanks area.¹ (Appendix C—Pan American's Brief to the Examiner, dated March 22, 1949 in the *United States-Alaska Service Case*.) In May, 1950 such operators carried 300 passengers to the Fairbanks area (as reported by Boeing Field). According to the most recent available information during the period from

June 20 through July 6, 1950, 319 passengers, or
 35 an average of 19 passengers per day, were carried by non-certificated services between Fairbanks and Seattle, while during June and July of 1948, an average of only approximately 8 passengers per day were transported to the Fairbanks area by non-certificated carriers. (Appendix C—Pan American's Brief to the Examiner, dated March 22, 1949 in the *United States-Alaska Service Case*.) The foregoing comparisons are believed to underestimate the probable operations to be expected during the peak period for the southbound movement. A better indication may be obtained from the fact that, according to a report received by Pan American from Annette Island, during the month of June, 1950 when the directional flow of traffic was mostly northbound, some six frequently operating and several other non-certificated carriers transited Annette for service on approximately 85

¹ The Fairbanks area is defined as that portion of Alaska lying north of 64° N. Latitude plus the area lying north of 62° N. Latitude between 147° 30' W. Longitude and the Canadian Border. (Pan American Exhibit PA-14, page 7 of 7 pages in *United States-Alaska Service Case*. (Docket No. 3286))

trips northbound, or an average of almost 20 trips per week.

Representative of the cut-throat competitive practices, with which the operation of certificated service to Fairbanks is faced, is the advertising piece attached hereto as Exhibit "B". Not only does the carrier therein named advertise a fare of \$65 as compared with Pan American's regular fare of \$105, but there is no indication that the carrier is not authorized to conduct a regular and frequent scheduled service. The carrier mentioned maintains a sales office in Fairbanks and according to Pan American's information and belief has recruited as its sales agents, among others, the taxicab drivers at Fairbanks, offering them a commission reported to be 20% on passenger sales.

The foregoing alone, and other information available to the Board should amply illustrate that the
 36 chaotic conditions which were prevalent at the time of the *United States-Alaska Service Case* and which were vividly disclosed at the hearing in said proceeding, are continuing, the only recognizable change being a geographical transfer from Anchorage to Fairbanks.

The urgency of this situation is fully disclosed in the following information concerning recent operations between Fairbanks and Seattle, which information was received by telegram by Pan American in New York on July 25, 1950 from its Pacific-Alaska Division:

"Although impossible get accurate figures northbound southbound passenger volumes have built up alarmingly as follows: March 134, April 124, May approx 400, June approx 600.

"PAA passenger loadings southbound as follows: March 275, April 157, May 185, June 321. These figures reflect decrease in number of passengers carried this four months period of 20 percent as compared to 1949 and we anticipate this tendency will continue until we able com-

pete effectively with proposed 75 dollar fare."

During the month of May, 1950, Pan American's southbound seat factor between Fairbanks and Seattle was only 23%.

4. Pan American does not propose any general reduction of its fare structure to the uneconomic level involved in the frantic scramble for traffic among the non-certificated carriers. Such a move would do little in the long run to develop a sound air transportation system between the United States and Alaska. Instead Pan American proposed to follow the only course which appeared appropriate and available to it under the circumstances. Pan American's tariff which the Board suspended, provided for a lower fare, applicable southbound *only*, on a space available basis *only*, with highly restrictive regulations being imposed on the use of this fare. The

37 space available fare was established at such a reasonably higher level than the fares being offered by the non-certificated carriers as would be likely to attract the traffic, considering the advantages inherent in Pan American's scheduled services. The proposed fare of \$75 would produce a yield of 4.91¢ per mile. The cost to Pan American of providing service under this fare, since it relates only to space available, would be little if anything but the cost of passenger service for filling otherwise empty seats and thus the costs involved would amount to only a small fraction of the \$75 fare.

5. The Board's Order, Serial No. E-4256, insofar as it purports to order a Suspension of the Tariff, is legally defective and was invalidly entered. It in no way specifies any objectionable features of the proposed Tariff nor does it set forth any reasons for said Suspension as required by Section 1002(g) of the Civil Aeronautics Act of 1938, as amended. (*Brown v. State Personnel Board*, 42 Cal. App. 2d 70, 110 P. 2d 497 (1941); *McKenna v. White*, 287 Mass. 495, 192 NE 84 (1934))

The order likewise fails to provide the reasonable notice required by Section 1002(g) of the Act for an Investiga-

tion. (Section 5 (a) *Administrative Procedure Act*, 5 U. S. C. 1004(a); *Final Report of the Attorney General's Committee on Administrative Procedure* (1941), page 61)

As a result of the Board's issuance of defective orders framed in broad general terms as is involved in the instant case, the carrier is not apprised until a later stage in the proceeding, subsequent to the hearing, as to what, if anything, is deemed illegal or even objectionable by anyone with respect to the Tariff under investigation.

Under the Board's present procedures, although Public Counsel is supposed to present the staff's case (Civil Aeronautics Board PN 1, Sec. 5.6, 15 Fed. Reg. 4293 (1950)), no position is taken by Public Counsel until after the hearings have been completed. This practice fails to afford the essential requisites of a fair hearing and does not constitute compliance with the reasonable notice requirements of the Act. Adequate notice is not provided where a party first learns of the contentions made by the agency from its (or in this case Public Counsel's) brief, filed after hearing (*Alabama Power Co. v. Federal Power Commission*, 136 F. (2d) 929, (C. C. A. 5th, 1943); Vom Baur, 1 *Federal Administrative Law* (1943) Cum. Sec. 294 (1947); *Attorney General's Manual on the Administrative Procedure Act*, (1947) pp. 46, 47).

6. The requirements that the Board furnish a statement of its reasons for a tariff suspension and afford reasonable notice of matters of fact and law deemed to sustain a tariff investigation are essential requisites to fairness in administrative proceedings, as prescribed by the Civil Aeronautics Act, in other similar Acts, and thereafter affirmed in the *Administrative Procedure Act*. They rest upon sound principles of policy with obvious purposes, among others: to protect against arbitrary, unreasonable or capricious actions or abuses or excess of statutory authority by an administrative body, thus saving parties from the burdens and expenses incident to unnecessary or unjustifiable proceedings; to afford

parties opportunity to make any legally necessary or appropriate adjustments or to effect informal settlements; to relieve parties from any preparation otherwise necessary to meet a variety of possible issues and contentions, some or many of which although identified with statutory objectives may in no manner actually be involved in a particular proceeding; and to provide an adequate basis for judicial review. That no one of these purposes has been served by the instant Order of Investigation and Suspension is readily apparent. The Board previously has allowed space available Tariffs to become and remain effective without suspension or formal investigation, including such tariffs filed by other carriers and applying to other areas, and the Board has terminated Suspension and Investigation proceedings upon considerations which are equally applicable to this proceeding.² The Board also has allowed non-certificated carriers, conducting substantial operations between the points involved in the instant Tariff, to establish lower tariff fares and has not to date effectively limited the combined frequencies and volumes of their operations. In view of these facts and as a result of the absence of required reasons and notice in connection with the instant Order, Pan American is totally uninformed as to any respects in which its suspended Tariff is deemed objectionable within the meaning of any applicable statutory standard, and the action taken against Pan American denies the equal treatment to which it is entitled under the law.

7. Pan American is sincerely interested in sustaining its Tariff, the principles and all possible issues with respect to the purpose and effect of which are clearly apparent and require no lengthy formal proceedings, and

² Pan American's Motion to Dismiss filed May 18, 1950; Board Order Serial No. E-4297 adopted June 7, 1950 (Docket No. 4397).

40 Pan American desires to avoid the burdens and unnecessary expense which would be inherent in the Investigation heretofore ordered. Although Pan American's Tariff would be of extreme importance in improving Pan American's commercial revenues by allowing it to retain existing traffic and to obtain additional traffic which otherwise does not and may not be expected to patronize certificated services, the imminent need for the Tariff and the clear factual considerations are such as not to justify full-scale investigation, including the delays ordinarily required in such proceedings before a final decision by the Board. We believe that the Board's responsibility is clearly to assist certificated carriers in realizing the maximum revenues from all available sources of commercial traffic. The suspension of the instant Tariff, however, has served to accomplish a result directly contrary to this objective. Accordingly, both upon consideration of the merits as demonstrated herein, and as a matter of legality of the Board's Order, Pan American respectfully submits that the Board's consideration of the instant Motion should result in an Order terminating the Suspension and dismissing the Investigation.

WHEREFORE, PAN AMERICAN WORLD AIRWAYS, INC. respectfully moves that the Board promptly rescind and set aside in its entirety the Board's Order, Serial No. E-4256, and dismiss the above proceeding, and that the Board grant such further and different relief as in the premises may seem fit.

Dated, New York,
July 27, 1950

Respectfully submitted,
PAN AMERICAN WORLD AIRWAYS, INC.

By /s/ John C. Pirie
John C. Pirie

Assistant General Counsel

41 STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

Affidavit

ERWIN BALLUDER, being first duly sworn, deposes and says that he is a Vice President of Pan American World Airways, Inc., a New York corporation; that he is duly authorized to execute this affidavit and has read and is familiar with the contents of the foregoing Motion; that he intends and desires that in granting or denying the prayer of said Motion, the Board shall place full and complete reliance upon the accuracy of each and all statements of fact made therein; that he is familiar with the facts set forth in said Motion, and to the best of his information and belief every statement of fact made therein is true, and no such statement is misleading.

/s/ Erwin Balluder
 Erwin Balluder

Subscribed and sworn to before
 me this 27th day of July, 1950

/s/ Emma F. Rahn
 Emma F. Rahn

Notary Public, State of New York
 No. 41-8483200

Qualified in New York County

Certificates filed with:

Queens, New York County Clerks

Queens, New York County Register's Office

Term expires March 30, 1952

NOTARIAL SEAL

* * * *

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 10th day of August, 1950

In the matter of a space available fare, and rules and regulations in connection therewith, from Fairbanks, Alaska to Seattle, Washington, proposed on behalf of PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54.

Docket No. 4508

Order on Motion to Dismiss

Pan American World Airways, Inc. (Pan American) having, on July 28, 1950, filed with the Board a "Motion to Dismiss" requesting the Board to rescind Order Serial No. E-4256 and to dismiss this proceeding on the grounds that (a) the fare, rules and regulations under investigation and suspension are lawful; (b) the aforesaid Order is legally defective because it did not (1) state the reasons for the suspension of that fare and the rules and regulations in connection therewith; (2) specify the matters under investigation; (3) apprise Pan American of the issues in this proceeding; and (c) all issues in this proceeding may be determined upon the motion;

IT APPEARING TO THE BOARD THAT:

1. The Board cannot determine, solely upon the basis of the aforesaid motion, whether or not the fare, and the rules and regulations in connection therewith under investigation and suspension in this proceeding are in fact just and reasonable and not unjustly discriminatory

nor unduly preferential nor unduly prejudicial and therefore cannot determine the issues herein upon the basis of the aforesaid motion but must determine these issues on the basis of the record to be made at the hearing;

2. The aforesaid Order specified the subject matter of the proceeding, stating that "the space available fare of \$75.00 from Fairbanks, Alaska to Seattle, Wash., and all rules and regulations in connection therewith, appearing on page 4 of Agent R. C. Lounsbury's Local 46 and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54" are the subject of this proceeding;

3. The aforesaid Order clearly specified the basis for the Board's jurisdiction, the Order stating that the Board was acting "pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, particularly Sections 205(a), 403, 404 and 1002 thereof";

4. The aforesaid order specified the reasons for the investigation and suspension, not merely stating that the fare and the rules and regulations in connection therewith were suspended and investigated but stating that they were suspended and investigated because they "may be unjust or unreasonable, unjustly discriminatory, or unduly preferential or unduly prejudicial";

5. In accordance with our Procedural Regulations, the issues of law and fact will be further defined and narrowed at the prehearing conference so that Pan American will be fully apprised of the issues of the proceeding prior to hearing; and

6. Under all of the foregoing circumstances, the matters set forth in the aforesaid motion do not warrant the dismissal of the proceeding at this time and the motion should be denied without prejudice to its renewal subsequent to the prehearing conference.

IT IS ORDERED THAT Pan American World Airways, Inc.'s "Motion to Dismiss" be and hereby is denied in all respects without prejudice to its renewal subsequent to the prehearing conference.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

* * * *

48 UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Pan American Fairbanks-Seattle Space Available Fare
Docket No. 4508

Report of Prehearing Conference

This proceeding involves an investigation of Pan American's proposed space available fare between Fairbanks, Alaska, and Seattle, Washington. Pursuant to notice a prehearing conference was held in Room E-214, Temporary Building No. 5, 17th and Constitution Avenue, N. W., Washington, D. C., on August 14, 1950. The following appearances were noted:

Henry J. Friendly and H. Don Reynolds for Pan American World Airways, Inc.

H. F. Scheurer, Jr., and C. E. Leasure for Northwest Airlines, Inc.

Harold P. Rosenberg and Laurence S. Steck, Public Counsel.

* * * *

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 23rd day of August, 1950

In the matter of a space available fare, and rules and regulations in connection therewith, from Fairbanks, Alaska, to Seattle, Washington, proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54.

Docket No. 4508

Supplementary Order of Investigation and Suspension

By Order Serial No. E-4256, the Board suspended for a 90 day period and ordered an investigation of a space available fare of \$75 from Fairbanks, Alaska to Seattle, Washington, and rules and regulations applicable thereto, filed on behalf of Pan American World Airways, Inc., pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54;

The 90-day period of suspension of the aforesaid matter will expire before the investigation of the lawfulness thereof can be concluded and final order made;

The Board, acting pursuant to the power vested in it by the Civil Aeronautics Act of 1938, as amended, particularly Sections 205(a), 403, 404 and 1002 thereof, and finding that suspension of the aforesaid fare, and rules and regulations applicable thereto for an additional 90-day period is necessary and appropriate in order to carry out the provisions and objectives of the Act, and to exercise and perform its powers and duties thereunder;

IT IS ORDERED THAT:

1. The period of suspension of the aforesaid \$75 space available fare from Fairbanks, Alaska to Seattle, Washington, and rules and regulations applicable thereto, proposed on behalf of Pan American World Airways, Inc. pursuant to the aforesaid tariff, be and it hereby is extended from August 30, 1950 to November 27, 1950, inclusive.

62 2. A copy of this order be filed with the aforesaid tariff and that copies hereof be served upon Pan American World Airways, Inc. and Air Transport Associates, Inc.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

63

OFFICIAL FILE

Supplement No. 2

to

C. A. B. No. 54

(Cancels Supplement No. 1)

R. C. LOUNSBURY, AGENT

Supplement No. 2

(Cancels Supplement No. 1)

to

LOCAL AND JOINT PASSENGER TARIFF No. P-AC-1

Participating Carriers are as Shown in Tariff

Naming

ALL YEAR ONE WAY and ROUND TRIP FARES

In U. S. CY.

Between Points in the United States on the one hand
and Points in Alaska on the other hand

Between Points in ALASKA

Between Points in the UNITED STATES on the one
hand and Points in CANADA on the other hand

Between Points in ALASKA on the one hand
and Points in CANADA on the other hand
and

Space available fare from Fairbanks, Alaska to
Seattle Washington, U. S. A.

Issued under authority of Section 222.5, of the Economic
Regulations of the Civil Aeronautics Board.

This Supplement will expire with November 27, 1950
unless sooner changed, cancelled or extended.

ISSUED: SEPTEMBER 20, 1950.

Issued by R. C. LOUNSBURY, AGENT
PAN AMERICAN WORLD AIRWAYS SYSTEM
28-19 Bridge Plaza North,
Long Island City 1, N. Y.

64 Page 2

By Order Serial No. E-4256, the Board suspended
for a 90 day period and ordered an investigation of a
space available fare of \$75 from Fairbanks, Alaska to
Seattle, Washington, and rules and regulations applicable
thereto, filed on behalf of Pan American World Airways,
Inc. pursuant to Agent R. C. Lounsbury's Local and Joint
Passenger Tariff No. P-AC-1, C. A. B. No. 54;

The 90 day period of suspension of the aforesaid mat-
ter will expire before the investigation of the lawfulness
thereof can be concluded and final order made;

IT IS ORDERED THAT:

1. The period of suspension of the aforesaid \$75
space available fare from Fairbanks, Alaska to Seattle,
Washington, and rules and regulations applicable

thereto, proposed on behalf of Pan American World Airways, Inc. pursuant to the aforesaid tariff, be and it hereby is extended from August 30, 1950 to November 27, 1950, inclusive;

2. A copy of this order be filed with the aforesaid tariff and that copies hereof be served upon Pan American World Airways, Inc.

65

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

DOCKET NO. 4508

PAN AMERICAN WORLD AIRWAYS, INC.
FAIRBANKS-SEATTLE SPACE AVAILABLE FARE

Notice of Hearing

In the matter of the investigation to determine the lawfulness of the Fairbanks-Seattle space available fare proposed in the tariff of Pan American World Airways, Inc.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, particularly Sections 205(a), 403, 404, and 1002 thereof, that hearing in the above-entitled proceeding is assigned to be held on September 12, 1950 at 10:00 a. m. (eastern daylight saving time) in Room 4823, Commerce Building, 14th Street and Constitution Avenue, N. W., Washington, D. C. before Examiner F. Merritt Ruhlen.

Without limiting the scope of the issues presented by the order of investigation, particular attention will be directed to the following matters and questions:

1. Are the fares, rules, and regulations under consideration unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial; and
2. If the fares, rules, and regulations under consideration in this proceeding are unjust or unreasonable or

unjustly discriminatory or unduly preferential or prejudicial, what are the lawful fares which the Board should determine and prescribe?

For more detailed information with respect to the issues involved attention is directed to the Prehearing Conference Report issued in this proceeding.

66 Notice also is given that any persons, other than parties of record as of September 1, 1950, desiring to be heard in this proceeding must file with the Board on or before September 12, 1950 a statement setting forth the issues of fact or law raised by this proceeding on which he desires to be heard.

For further details with respect to this investigation, interested parties are referred to the pertinent orders of the Civil Aeronautics Board on file in the docket.

Dated at Washington, D. C., September 1, 1950.

By the Civil Aeronautics Board:

M. C. Mulligan
Secretary

(SEAL)

67 UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

DOCKET NO. 4508
PAN AMERICAN WORLD AIRWAYS, INC.
FAIRBANKS-SEATTLE SPACE AVAILABLE FARE

Notice of Postponement of Hearing

In the matter of the investigation to determine the lawfulness of the Fairbanks-Seattle space available fare proposed in the tariff of Pan American World Airways, Inc.

Notice is hereby given that the hearing in the above-entitled proceeding now assigned to be heard on September 12, 1950 is postponed indefinitely.

62 A

Dated at Washington, D. C. September 7, 1950.
By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

68

OFFICIAL FILE

Supplement No. 3

to

C. A. B. No. 54

(Completes the cancellation
of C. A. B. No. 54)

R. C. LOUNSBURY, AGENT

Supplement No. 3

to

LOCAL AND JOINT PASSENGER TARIFF No. P-AC-1

Participating Carriers Are as Shown in Tariff

Naming

ALL YEAR ONE WAY and ROUND TRIP FARES
IN U. S. CY.

Between Points in the UNITED STATES on the one
hand and Points in Alaska on the other hand

Between Points in ALASKA

Between Points in the UNITED STATES on the one
hand and Points in CANADA on the other hand

Between Points in ALASKA on the one hand
and Points in CANADA on the other hand
and

Space available fare from Fairbanks, Alaska to
Seattle, Washington, U. S. A.

Issued under authority of Section 222.5, of the Economic Regulations of the Civil Aeronautics Board.

CANCELLATION NOTICE

The space available fare of \$75.00 from Fairbanks, Alaska to Seattle, Washington under suspension, Docket No. 4508, appearing on Page 4 of the original tariff is hereby cancelled. This completes the cancellation of Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54.

This supplement is issued on one (1) day's notice under Special Tariff Permission of the Civil Aeronautics Board, C. A. B. No. 3862.

Issued by R. C. LOUNSBURY, AGENT
PAN AMERICAN WORLD AIRWAYS SYSTEM
28-19 Bridge Plaza North,
Long Island City 1, N. Y.
Issued: September 21, 1950.
Effective: September 22, 1950.

69

Orders

Serial Number E-5675

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 29th day of September, 1950

In the matter of a space available fare and rules and regulations in connection therewith, from Fairbanks, Alaska, to Seattle, Washington, proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-1, C. A. B. No. 54.

Docket No. 4508

Order of Dismissal

The Board having instituted¹ a proceeding of investigation and suspension involving the space available fare of \$75 from Fairbanks, Alaska, to Seattle, Washington, and all rules and regulations in connection therewith appearing on page 4 of Agent R. C. Lounsbury's Local and Joint Tariff No. P-AC-1, C. A. B. No. 54;

The aforesaid fare and the rules and regulations in connection therewith having been cancelled pursuant to special tariff permission obtained from the Board;

The Board acting upon its own initiative and pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, particularly Sections 205(a), 403, 404 and 1002 thereof, and finding that the proceeding of investigation and suspension involving the matter referred to in ordering paragraph 1 below is now moot and should be dismissed;

IT IS ORDERED THAT:

1. The proceeding and suspension bearing Docket No. 4508 be and it hereby is dismissed;

2. A copy of this order be served upon Pan American World Airways, Inc., and Air Transport Associates, Inc.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

* * * *

¹ Orders Serial Nos. E-4256 and E-4539, respectively adopted May 26, 1950 and August 23, 1950.

75

Before the
CIVIL AERONAUTICS BOARD
Washington, D. C.

In the Matter of a Special Fare for Travel on Cargo Aircraft from Fairbanks, Alaska to Seattle, Washington, proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lunsbury's Local and Joint Passenger Fares Tariff C. A. B. No. 71 cancelling C. A. B. No. 64.

Docket No.

Protest of
Air Transport Associates, Inc.

Comes now Air Transport Associates, Inc. (hereinafter referred to as "Air Transport") and pursuant to Sections 2, 403, 404 and 1002 of the Civil Aeronautics Act, as amended (hereinafter referred to as the "Act") together with such other provisions thereof as may be applicable, and Section 302.14 of the Economic Regulations of the Civil Aeronautics Board (hereinafter referred to as the "Board"), complains to the Board as follows:

Pan-American World Airways System (hereinafter referred to as "Pan American") has proposed a change in Agent Lunsbury's Local and Joint Passenger Tariff identified as C. A. B. No. 64, providing for special rules applicable to fares for travel on cargo aircraft between Fairbanks, Alaska and Seattle, Washington.

The proposed fares complained of herein provide for one way transportation as available on cargo aircraft southbound from Fairbanks, Alaska on cargo flights designated P. A. 910 and P. A. 912 in G. S., CAB-2 at seventy-five dollars (\$75.00).

Round trip fares are available at one hundred sixty-two dollars (\$162.00) on southbound cargo flights, as indicated for the one way cargo flight, on regularly scheduled passenger service.

76 The proposed fares and supporting rules are protested on the ground that they are without economic justification, as they are below the cost of operation and cannot be considered as promotional. Such fares, if allowed to become effective, would be unjust, unreasonable, unjustly discriminatory, unduly preferential and unduly prejudicial to the industry and the public.

Air Transport does not oppose low fare service between Alaska and the United States. In fact Air Transport and other large irregular air carriers operating without benefit of air mail subsidy have pioneered the low fare rates in this area. It is through the efforts of Air Transport and the large irregular air carriers that reasonable fares are available to the public between Seattle, Washington, and Fairbanks, Alaska.

Air Transport advocates economy and efficiency in air transportation and has furnished the public with economical and efficient service. Air Transport opposes Pan American's proposal because it would spread economic chaos throughout the air transportation industry, hinder the progress of the nonsubsidized air transportation industry and impose heavy burdens upon the Government and thereby the taxpayers, in the form of subsidy air mail pay.

Air Transport submits that such an operation would unduly divert traffic from normal-fare flights, inevitably result in expansion of low fare cargo passenger service by and through Fairbanks, Alaska, Seattle, Washington route, affecting the entire domestic air transportation system and debase the entire domestic fare structure.

The establishment of such a fare would necessarily divert traffic from established services and not develop new traffic. The failure of Pan American to define

"cargo air craft" results in an unfair, uncertain, discriminatory and arbitrary fare structure as well as illogical and unreasonable.

Air Transport further submits that such a fare would disrupt the present competitive balance and is most undesirable at this time of present emergency, when Air Transport industry is confronted with rising prices and wages and the diversion of aircraft.

It is readily apparent that Pan American's proposal is designed to accomplish the same purpose as that for a "space available" fare which the Board suspended and made the subject of the pending investigation under Docket No. 4508, the only difference being in the provision for round trip fares and the undefined type of aircraft referred to as "cargo Aircraft". There is obviously no substantial difference between the proposals.

Pan American's "space available" proposal now being the subject of a Board investigation under Docket 4508, it follows that the refile of the same basic proposal with differences only as to form requires that the Board issue a corresponding order of investigation and suspension in connection with Pan American's latest proposal.

The Board has already found that a hearing is required to carry out the purposes of the Act, and the Board should reject Pan American's attempt to circumvent the investigation instituted by the Board and should continue with the investigation by suspending Pan American's proposal and consolidating it with the proceeding under Docket 4508 which was postponed indefinitely by order of the Board on September 7, 1950, in order that all the facts and circumstances underlying Pan American's proposal to cut, wastefully and uneconomically the prevailing air fare levels may be considered in terms of public interest. Air Transport respectfully requests that the Board take that action.

The Board has found that Pan American's basic proposal involved important policy consideration and that such an experiment should not proceed without investigation and study. It is therefore illogical and unwarranted for the Board now to resolve those questions without hearing, without evidence and without the mature consideration contemplated by the investigation. Therefore, the Board, should, as a matter of Policy suspend Pan American's proposal and institute an investigation thereof and consolidate the proceeding with the pending investigation under Docket 4508.

If Pan American sincerely desired consideration of its proposal on its merits and a full revelation of its implications, it could have requested a prompt and early hearing in the investigation proceeding under Docket No. 4508. Air Transport would not object to such hearing and Air Transport, in fact, requests a hearing at which the facts can be shown. In the alternative Pan American might have formally petitioned the Board to reconsider the Order Number E-4539 of August 23, 1950, suspending its tariff. But Pan American took neither of those logical courses and instead refiled its tariff without substantial difference. It is plain that Pan American does not

78 desire, and is attempting to evade, full, fair and complete consideration of its proposal. Pan American's action is merely a sham and a subterfuge and Air Transport is confident the Board will not indulge Pan American's circumventual tactics.

It should be apparent to Pan American that a fare structure for the air transportation industry can not be based on passengers being transported in "so called" cargo aircraft. Obviously, different fares would have to be established for each type of aircraft which would further hinder the natural development of air transportation.

Finally, the Board has before it for decision the matter of the adequacy of cargo service between the United

States and the Territory of Alaska and application for certificates or amendments of certificates of public convenience and necessity known as the United States-Alaska Service Case Docket No. 3286 et al. The rate structure of the carriers presently operating between the United States and Alaska should not be radically changed until a decision has been reached in this case.

WHEREFORE, Air Transport asks that the Board suspend Pan American's proposed new fares, rules and regulations appearing on Agent Lunsbury's Local and Joint Passenger Tariff identified as C. A. B. No. 64 and institute an investigation into lawfulness thereof pursuant to Section 1002 of the Act.

Respectfully,

/s/ John J. Klak

John J. Klak

Attorney for Air Transport
Associates, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Protest has been mailed, postage prepaid, and properly addressed to all known parties to the proceeding.

Dated: October 3, 1950

/s/ John J. Klak

John J. Klak

Attorney for
Air Transport Associates, Inc.

* * * *

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 18th day of October, 1950

In the Matter of a Special Fare for Travel on Cargo
Aircraft from Fairbanks, Alaska to Seattle, Wash-
ington proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and
Joint Passenger Tariff No. P-AC-4, C. A. B. No. 71
cancelling C. A. B. No. 64.

Docket No. 4700

Order Dismissing Protest

Air Transport Associates, Inc. having filed a protest requesting the Board to investigate and suspend the proposed one-way fare of \$75 from Fairbanks, Alaska to Seattle, Washington, and the round-trip fare of \$162 between Fairbanks and Seattle as contained in Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-4, C. A. B. No. 71, filed on behalf of Pan American World Airways, Inc.;

The Board having considered the aforesaid protest, and finding that Pan American World Airways, Inc. has been permitted to cancel the aforesaid round-trip fare and that said protest does not state facts which warrant suspension or investigation or other action on its part and should be dismissed;

The Board, acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly Sections 205(a) and 1002(a) thereof, and

finding that its action is necessary and appropriate to carry out the provisions of the Act and is required by the public interest;

IT IS ORDERED THAT:

The protest of Air Transport Associates, Inc. be and it hereby is dismissed.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

* * * *

85

Before the
CIVIL AERONAUTICS BOARD
Washington, D. C.

In the Matter of a Special Fare for Travel on Cargo Aircraft from Fairbanks, Alaska to Seattle, Washington proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lunsbury's Local and Joint Passenger Fares Tariff C. A. B. No. 71 cancelling C. A. B. No. 64.

Docket No. 4700

*Petition of Air Transport Associates, Inc. for
Reconsideration of Order Dismissing Protest
of Proposed Tariff Change*

Now comes Air Transport Associates, Inc. (hereinafter called Air Transport) pursuant to Section 302.11 (3) (c) of the Rules of Practice in Economic Proceedings, and petitions the Civil Aeronautics Board (hereinafter referred to as the Board) to reconsider its Order (Serial No. E-4743, adopted October 18, 1950) dismissing the Protest of Air Transport to the tariff of Pan American

World Airways System (hereinafter called Pan American) which provides a Special Fare for Travel on Cargo Aircraft under which passengers are transported for \$75.00 one way from Fairbanks, Alaska to Seattle, Washington.

In support of its Motion Air Transport states as follows:

1. The Board's Order, Serial No. E-4743, is legally deficient insofar as it dismisses the Protest of Air Transport without setting forth any reason for such dismissal. The Board's Order fails to state any reason for the dismissal of Air Transport's protest except to recite in general terms that the "Protest does not state facts which warrant suspension or investigation or other action." Air Transport respectfully submits that such a bare recitation of dismissal does not constitute a statement of the reasons for dismissal. Since broad
86 generalities are the only grounds for dismissal of the Order, to contend that the recital of such generalities in the Order as a statement of reasons, is to dismiss a bona fide protest of a Carrier over whom the Board has exercised its authority, without considering and stating concisely and clearly its position with respect to the reasons set forth in the Protest. The terms and provisions of the Board's Order while carrying the full weight and effect of the Board as a dismissal, with only meaningless phrases to support the entry of such Order carries the inference that the Board has no reasons to dismiss the Protest.

2. Air Transport respectfully submits that in its Protest filed October 3, 1950 it alleged the following facts which have not been answered by the Board either by hearing or on the record in its Order:

"The proposed fares and supporting rules are protested on the ground that they are without economic justification, as they are below the cost of operation and cannot be considered as promotional. Such fares, if allowed

to become effective, would be unjust, unreasonable, unjustly discriminatory, unduly preferential and unduly prejudicial to the industry and the public.

"Air Transport does not oppose low fare service between Alaska and the United States. In fact Air Transport and other large irregular air carriers operating without benefit of air mail subsidy have pioneered the low fare rates in this area. It is through the efforts of Air Transport and the large irregular air carriers that reasonable fares are available to the public between Seattle, Washington, and Fairbanks, Alaska.

"Air Transport opposes Pan American's proposal because it would spread economic chaos throughout the air transportation industry, hinder the progress of the non-subsidized air transportation industry and impose heavy burdens upon the Government and thereby the taxpayers, in the form of subsidy air mail pay.

"Air Transport submits that such an operation would unduly divert traffic from normal-fare flights, inevitably result in expansion of low fare cargo passenger service by and through Fairbanks, Alaska, Seattle, Washington route, affecting the entire domestic air transportation system and debase the entire domestic fare structure.

"The establishment of such a fare would necessarily divert traffic from established services and not develop new traffic. The failure of Pan American to define "cargo air craft" results in an unfair, uncertain, discriminatory and arbitrary fare structure as well as illogical and unreasonable.

"Air Transport further submits that such a fare would disrupt the present competitive balance and is most undesirable at this time of present emergency, when Air Transport industry is confronted with rising prices and wages and the diversion of aircraft."

3. The Board's Order fails to justify the economic loss resulting from the reduction in fares, and fails to explain the impossibility of a reasonable increase in the volume

of passenger traffic in order to make up the loss. The Board fails to explain the unjust, discriminatory and unduly prejudicial character of the double system of fares which complicate the Pan American tariff which is protested herein;

87 4. The Order fails to state the economic justification for allowing Pan American a tariff which is below its cost of operation, and is not promotional in character;

5. The Board has failed, in its Order, to answer Air Transport's Protest with respect to this tariff as it is affected or would be affected had consideration of the U. S. Alaska Service case Docket No. 3286 et al, been decided;

6. Inasmuch as the Board's Order fails to explain, or examine on the record, any of the facts and circumstances set forth in the Protest of Air Transport, it is necessary that speculations and presumptions be entertained in order to determine the substantive reasons the Board may have had for its action.

7. The Board in its order, and Pan American in its tariff, have failed to identify the character of the transportation which will be used under the Special Fare for Travel on Cargo Aircraft tariff. It is obvious that a plush transport with an empty seat is not a cargo plane and should not be so considered for purposes of a tariff. It is also obvious that a cargo plane with bucket seats can not be considered as a passenger vehicle for purposes of a Special Fare for Travel on Cargo Aircraft tariff. As a matter of fact, Pan American transports a quantity of cargo on all flights, thereby adding further uncertainty in the differentiation between passenger and cargo aircraft. In view of the foregoing it is highly speculative as to just what services the public is entitled to under the tariff as proposed by Pan American and approved by the Board. Furthermore, the fare is dis-

criminatory and violates Section 404 (b) of the Civil Aeronautics Act of 1938, which provides as follows:

"(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

8. Finally, the Special Fare for Travel on Cargo Aircraft proposed on behalf of Pan American is identical in effect with a previously proposed Space Available Fare of \$75.00 from Fairbanks, Alaska to Seattle, Washington, which was duly considered by the Board and dismissed by Order Number E-4675, dated September 29, 1950, in Docket No. 4508.

88 WHEREFORE, Air Transport respectfully prays that the Civil Aeronautics Board reject Pan American's proposed tariff C. A. B. No. 71 and enter upon an investigation for the purpose of examining the reasonableness, lawfulness and effect of the fare proposed therein for the reasons set forth in the Protest of Air Transport Associates and in view of the present rules of the Board, and pending completion of such investigation, the Board suspend the operation of said tariff and defer the use thereof, and that the Board grant to Air Transport Associates, Inc. such other and further relief as the Board shall deem proper.

Respectfully submitted,
AIR TRANSPORT ASSOCIATES, INC.

By /s/ John J. Klak

John J. Klak

Attorney for
Air Transport Associates, Inc.

November 14, 1950

* * * *

Serial Number E-4919

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 8th day of December, 1950.

In the Matter of a Special Fare for Travel on Cargo
Aircraft from Fairbanks, Alaska to Seattle, Wash-
ington proposed on behalf of

PAN AMERICAN WORLD AIRWAYS, INC.

pursuant to Agent R. C. Lounsbury's Local and
Joint Passenger Tariff No. P-AC-4, C. A. B. No. 71
cancelling C. A. B. No. 64.

Docket No. 4700

Order Denying Petition

Air Transport Associates, Inc. (hereinafter called Air Transport), having filed with the Board on November 15, 1950 a petition requesting the Board to reconsider Order Serial No. E-4743, adopted October 18, 1950 which dismissed the protest of Air Transport to the tariff of Pan American World Airways, Inc. providing a special one-way fare of \$75 for travel on cargo aircraft from Fairbanks, Alaska to Seattle, Washington, and requesting further that the Board reject the aforesaid tariff and institute an investigation to determine its lawfulness;

Air Transport having stated in support of said petition that the aforesaid order is legally deficient since the only reason stated therein for the dismissal of Air Transport's petition was that Air Transport's protest "does not state facts which warrant suspension or investigation or other action on its part and should be dismissed";

The Board upon consideration of Air Transport's petition and Air Transport's protest finding that:

1. Air Transport's protest and Air Transport's petition contain generalized allegations and conclusions but do not include facts which would support the allegations and conclusions contained therein;

2. Neither the original protest nor the petition for reconsideration state facts which warrant any action by the Board and, therefore, the petition should be denied;

91 The Board acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly Sections 205(a) and 1002(a) thereof, and finding further that its action is necessary and appropriate to carry out the provisions of the Act and is required by the public interest;

IT IS ORDERED, That the petition of Air Transport Associates, Inc., be and it hereby is denied.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan
M. C. Mulligan
Secretary

(SEAL)

R. C. LOUNSBURY, AGENT

LOCAL AND JOINT PASSENGER TARIFF No. P-AC-1

Cancelling Local and Joint Passenger Tariff No. ID-17

NAMING

**ALL YEAR ONE WAY and ROUND TRIP FARES
IN U. S. CY.**

Between Points in the UNITED STATES on the one hand
and Points in ALASKA on the other hand

Between Points in ALASKA

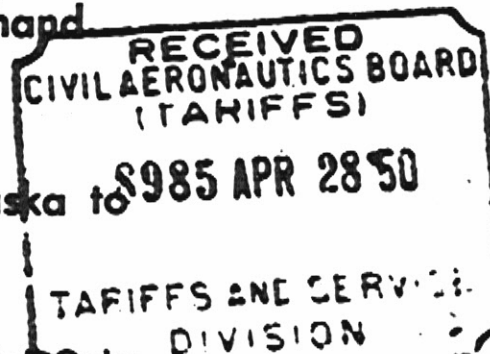
Between Points in the UNITED STATES on the one hand
and Points in CANADA on the other hand

Between Points in ALASKA on the one hand
and Points in CANADA on the other hand

AND

Space available fare from Fairbanks, Alaska to
Seattle, Washington, U.S.A.

The Points Named Herein Are in Continuous Alphabetical Order



Governed, except as otherwise provided herein, by rules shown in Rules and Regulations Tariff No. RR-1, C.A.B. No. RR-1, A.T.B. No. 5*, and by Rules and Regulations Tariff No. CL-1, C.A.B. No. CL-1, A.T.B. No. 6*, governing Classified Travel, issued by the Agent named above, including revisions thereto and succeeding issues thereof.

* Agent R. C. Lounsbury's series.

Rates, fares, charges and rules provided herein have been filed with or submitted to each country as required by applicable international agreement.

ISSUED:
MAY 1, 1950.

Issued by: **R. C. LOUNSBURY, AGENT**
PAN AMERICAN WORLD AIRWAYS SYSTEM
28-19 Bridge Plaza North,
Long Island City 1, N. Y.

EFFECTIVE:
JUNE 1, 1950.

APPLICATION OF TARIFF:

The fares, rates and charges shown in this tariff apply from airport to airport only, via the carrier(s), via the routings and between the points named herein and may be used in combination with fares, rates and charges of other carriers to or from points not listed herein.

PARTICIPATING CARRIERS:

This tariff is published and filed with the Civil Aeronautics Board and the Air Transport Board of Canada by R.C.Lounsbury, Agent, for and on behalf of the following named carrier(s) under authority of the powers of attorney indicated below which are filed with the Civil Aeronautics Board and the Air Transport Board of Canada:

CARRIER	ABBREVIATION	POWER OF ATTORNEY NOS.	
		C.A.B. No.	A.T.B. PA. 2
Alaska Coastal Airlines.	ACA	12	
Ellis Air Lines, Inc.	ELLIS	11	
Pacific Northern Air Lines, Inc.	PNA	13	
ΔPan American World Airways, Inc.	PAA	1	No.1

† R.C.Lounsbury, acting under authority conferred on him as Alternate Agent in Powers of Attorney so referenced.

EXPLANATION OF ABBREVIATIONS:

Where abbreviation of the carrier's name appears it shall be held to designate the carrier shown opposite the corresponding designation in the above table.

A.T.B. - Air Transport Board of Canada.	Nos. - Numbers.
C.A.B. - Civil Aeronautics Board.	O.W. - One way.
CAA - Civil Aeronautics Administration.	R.T. - Round trip.
Can. - Canada.	USA - United States of America.
Inc. - Incorporated.	U.S.Cy. - United States Currency.
No. - Number.	Wash. - Washington.
	Y.T. - Yukon Territory.

EXPLANATION OF REFERENCE MARKS:

- ↓ - Denotes decreases.
- ↑ - Denotes increases.
- Δ - Denotes changes in wording which result in neither increases nor decreases.
- - Denotes additions or new items.
- NS - No local passage sold.

ALPHABETICAL LIST OF POINTS FOR WHICH FARES ARE NAMED HEREIN SHOWING AIRPORTS (WHERE USED) THROUGH WHICH SUCH POINTS ARE SERVED.

CITIES		CARRIERS	AIRPORTS
Anchorage.	.Alaska	PNA	
Angoon.	.Alaska	ACA	
Cordova.	.Alaska	PNA	
Craig.	.Alaska	ELLIS	
Fairbanks.	.Alaska	PAA	Ladd Field
Galena.	.Alaska	PAA	
Haines.	.Alaska	ACA	
Hoonah.	.Alaska	ACA	
Hydaburg.	.Alaska	ELLIS	
Juneau.	.Alaska	ACA, ELLIS, PAA, PNA	Juneau
Ketchikan (Annette Island)	.Alaska	ACA, ELLIS, PAA	Army Air Base
Ketchikan (Seaplane Docks)	.Alaska	ELLIS	
Klawock.	.Alaska	ELLIS	
Kodiak.	.Alaska	PNA	
Naknek.	.Alaska	PNA	
Nome.	.Alaska	PAA	Mark Field
Pelican.	.Alaska	ACA	
Petersburg.	.Alaska	ACA, ELLIS	
Seattle.	Wash., USA	PAA	Boeing Field
Skagway.	.Alaska	ACA	
Sitka.	.Alaska	ACA	
Tenakee.	.Alaska	ACA	
Whitehorse.	Y.T., Can.	PAA	Whitehorse
Wrangell.	.Alaska	ACA, ELLIS	
Yakutat.	.Alaska	PNA	

**ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS**

For Explanation of Route Numbers, see Page 4.

BETWEEN AND	Anchorage, Alaska			Angoon, Alaska			Cordova, Alaska			Craig, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Ketchikan(Annette Island) . . Alaska	3	80	144.00	-	-	-	3	79	142.20	-	-	-
Ketchikan(Seaplane Docks) . . Alaska	8	80	144.00	-	-	-	8	79	142.20	-	-	-
Seattle Washington, U.S.A.	3	100	180.00	6	80	144.00	3	99	178.20	4	68	122.40
BETWEEN AND	Fairbanks, Alaska			Galena, Alaska			Haines, Alaska			Hoonah, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Juneau Alaska	1	60	108.00	2	77	138.60	-	-	-	-	-	-
Ketchikan(Annette Island) . . Alaska	1	75	135.00	1	93	167.40	-	-	-	-	-	-
Ketchikan(Seaplane Docks) . . Alaska	4	75	135.00	4	97	174.60	-	-	-	-	-	-
Nome Alaska	1	50	90.00	1	40	72.00	-	-	-	-	-	-
Petersburg Alaska	7	68	122.40	-	-	-	-	-	-	-	-	-
Seattle Washington, U.S.A.	1	105	189.00	2	152	273.60	6	80	144.00	6	78	140.40
Sitka Alaska	6	68	122.40	-	-	-	-	-	-	-	-	-
Whitehorse Y.T., Can.	1	50	90.00	2	67	120.60	-	-	-	-	-	-
Wrangell Alaska	7	70	126.00	-	-	-	-	-	-	-	-	-
BETWEEN AND	Hydaburg, Alaska			Juneau, Alaska			Ketchikan, (Annette Island) Alaska			Ketchikan, (Seaplane Docks), Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Ketchikan(Annette Island) . . Alaska	-	-	-	1	31	55.80	-	-	-	-	-	-
Ketchikan(Seaplane Docks) . . Alaska	-	-	-	4	31	55.80	-	NS	NS	-	-	-
Nome Alaska	-	-	-	2	97	174.60	1	115	207.00	4	115	207.00
Seattle Washington, U.S.A.	4	68	122.40	1	66	118.80	1	49	88.20	4	53	89.40
Whitehorse Y.T., Can.	-	-	-	1	18	32.40	1	37	66.60	-	-	-
BETWEEN AND	Klawock, Alaska			Kodiak, Alaska			Naknek, Alaska			Nome, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Petersburg Alaska	-	-	-	-	-	-	-	-	-	7	99	178.20
Seattle Washington, U.S.A.	4	68	122.40	3	135	243.00	3	140	252.00	2	130	234.00
Sitka Alaska	-	-	-	-	-	-	-	-	-	6	99	178.20
Whitehorse Y.T., Can.	-	-	-	-	-	-	-	-	-	2	83	149.40
Wrangell Alaska	-	-	-	-	-	-	-	-	-	7	105	189.00

: For space available fare applicable from Fairbanks, Alaska to Seattle, Wash., U.S.A. refer to Page 4.
For explanation of abbreviations and reference marks used but not explained on this page, see Page 2.

**ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS**

BETWEEN AND	Pelican, Alaska			Petersburg, Alaska			Seattle, Washington, U.S.A.		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Seattle. Washington, U.S.A.	6	80	144.00	5	70	126.00	1	-	-
Skagway. Alaska	-	-	-	-	-	-	6	80	144.00
Sitka. Alaska	-	-	-	-	-	-	6	75	135.00
Tenakee. Alaska	-	-	-	-	-	-	6	78	140.40
Whitehorse. Y.T., Can.	-	-	-	-	-	-	1	80	144.00
Wrangell. Alaska	-	-	-	-	-	-	5	68	122.40
Yakutat. Alaska	-	-	-	-	-	-	3	95	171.00

■ SPACE AVAILABLE FARE IN UNITED STATES CURRENCY

TO	FROM	Route No.	O.W.
	Fairbanks, Alaska		
Seattle, Washington, U.S.A.		9	75

SPECIAL RULES APPLICABLE TO SPACE AVAILABLE FARE

- (1) **FARES:** Tickets for Space Available Travel will be valid southbound from Fairbanks, Alaska only and will be on sale in Fairbanks, Alaska only.
- (2) **NO ADVANCE RESERVATIONS:** Transportation under this fare does not carry with it the privilege of advance reservations; Passengers will be accepted for travel under this fare only subject to space being available at the time of departure of aircraft from Fairbanks, Alaska.
- (3) **STOPOVERS AND LIMITS:** Tickets for Space Available Travel must be used for the flights for which space is obtained without stopovers, and are without further value on completion of such flights.
- (4) **OVERLOADS:** In the case of overload due to any reason whatsoever, if in the opinion of the carrier it is necessary to offload any passengers or cargo, passengers and their baggage traveling at the fare named herein will be removed before any full rate traffic.

Route Nos.	ROUTES	
	Routes Shown Are Applicable in Either Direction. Joint fares named in this tariff include cost of transfer at points of interchange.	
1	PAA direct ♣	
2	PAA via Fairbanks ♣	
3	PNA Juneau; PAA ♣	
4	PAA Ketchikan (Annette Island); ELLIS	
5	PAA Ketchikan (Annette Island) or Ketchikan (Seaplane Docks); ACA or ELLIS	
6	PAA Juneau; ACA ♣	
7	PAA Juneau; ACA or ELLIS ♣	
8	PNA, Juneau; PAA, Ketchikan (Annette Island); ELLIS ♣	
■9	PAA direct - one direction only.	

For explanation of abbreviations and reference marks used but not explained on this page, see page 2.

♣ Passengers stopping over at Ketchikan are not permitted to remain at Annette Island but must proceed immediately to Ketchikan proper at their own expense. Transfer will be arranged, upon request, at the time ticket is issued.

*** SUSPENDED UNTIL
9-27-50 BY ORDER
4508 DOCKET**

E-4539
E 4256

R. C. LOUNSBURY, AGENT

LOCAL AND JOINT PASSENGER TARIFF No. P-AC-2

Cancelling Local and Joint Passenger Tariff No. P-AC-1

NAMING

**ALL YEAR ONE WAY and ROUND TRIP FARES
IN U. S. CY.**Between Points in the UNITED STATES on the one hand
and Points in ALASKA on the other hand

Between Points in ALASKA

Between Points in the UNITED STATES on the one hand
and Points in CANADA on the other handBetween Points in ALASKA on the one hand
and Points in CANADA on the other hand

AND

Space available fare from Fairbanks, Alaska to
Seattle, Washington, U.S.A.

The Points Named Herein Are in Continuous Alphabetical Order

Governed, except as otherwise provided herein, by rules shown in Rules and Regulations
Tariff No. RR-1, C.A.B. No. RR-1, A.T.B. No. 5*, and by Rules and Regulations Tariff No. CL-1,
C.A.B. No. CL-1, A.T.B. No. 6*, governing Classified Travel, issued by the Agent named above,
including revisions thereto and succeeding issues thereof.

* Agent R. C. Lounsbury's series.

Rates, fares, charges and rules provided herein have been filed with or submitted to each
country as required by applicable international agreement.

ISSUED:
JUNE 1, 1950

Issued by: R. C. LOUNSBURY, AGENT
PAN AMERICAN WORLD AIRWAYS SYSTEM
28-19 Bridge Plaza North,
Long Island City 1, N. Y.

EFFECTIVE:
JULY 1, 1950.
(Except as noted)

APPLICATION OF TARIFF:

The fares, rates and charges shown in this tariff apply from airport to airport only, via the carrier(s), via the routings and between the points named herein and may be used in combination with fares, rates and charges of other carriers to or from points not listed herein.

PARTICIPATING CARRIERS:

This tariff is published and filed with the Civil Aeronautics Board and the Air Transport Board of Canada by R.C.Lounsbury, Agent, for and on behalf of the following named carrier(s) under authority of the powers of attorney indicated below which are filed with the Civil Aeronautics Board and the Air Transport Board of Canada:

CARRIER	ABBREVIATION	POWER OF ATTORNEY NOS.	
		C.A.B. No.	A.T.B. PA. 2
Alaska Coastal Airlines.	ACA	12	
Ellis Air Lines, Inc.	ELLIS	11	
Pacific Northern Air Lines, Inc.	PNA	13	
Pan American World Airways, Inc.	PAA	1	No.1

† R.C.Lounsbury, acting under authority conferred on him as Alternate Agent in Powers of Attorney so referenced.

EXPLANATION OF ABBREVIATIONS:

Where abbreviation of the carrier's name appears it shall be held to designate the carrier shown opposite the corresponding designation in the above table.

A.T.B. - Air Transport Board of Canada.	Nos. - Numbers.
C.A.B. - Civil Aeronautics Board.	O.W. - One way.
CAA - Civil Aeronautics Administration.	R.T. - Round trip.
Can. - Canada.	USA - United States of America.
Inc. - Incorporated.	U.S.Cy. - United States Currency.
No. - Number.	Wash. - Washington.
	Y.T. - Yukon Territory.

EXPLANATION OF REFERENCE MARKS:

- ↓ - Denotes decreases.
- ↑ - Denotes increases.
- ▲ - Denotes changes in wording which result in neither increases nor decreases.
- - Denotes additions or new items.
- NS - No local passage sold.

ALPHABETICAL LIST OF POINTS FOR WHICH FARES ARE NAMED HEREIN SHOWING AIRPORTS (WHERE USED) THROUGH WHICH SUCH POINTS ARE SERVED.

CITIES		CARRIERS	AIRPORTS
Anchorage.	.Alaska	PNA	
Angoon	.Alaska	ACA	
Cordova.	.Alaska	PNA	
Craig.	.Alaska	ELLIS	
Fairbanks.	.Alaska	PAA	Ladd Field
†X	.†X	†X	
Haines	.Alaska	ACA	
Hoonah	.Alaska	ACA	
Hydaburg	.Alaska	ELLIS	
Juneau	.Alaska	ACA, ELLIS, PAA, PNA	Juneau
Ketchikan (Annette Island)	.Alaska	ACA, ELLIS, PAA	Army Air Base
Ketchikan (Seaplane Docks)	.Alaska	ELLIS	
Klawock.	.Alaska	ELLIS	
Kodiak	.Alaska	PNA	
Naknek	.Alaska	PNA	
Nome	.Alaska	PAA	Mark Field
Pelican.	.Alaska	ACA	
Petersburg	.Alaska	ACA, ELLIS	
Seattle.	.Wash., USA	PAA	Boeing Field
Shagway.	.Alaska	ACA	
Sitka.	.Alaska	ACA	
Tenakee.	.Alaska	ACA	
Whitehorse	.Y.T., Can.	PAA	Whitehorse
Wrangell	.Alaska	ACA, ELLIS	
Yakutat.	.Alaska	PNA	

X - Denotes Cancellation.

† - Effective June 2, 1950. Issued on one (1) day's notice under Special Tariff Permission of the Civil Aeronautics Board, C.A.B. No. 3520.

ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS

For Explanation of Route Numbers, see Page 4.

BETWEEN AND	Anchorage, Alaska			Angoon, Alaska			Cordova, Alaska			Craig, Alaska		
	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.
Ketchikan(Annette Island) . . . Alaska	3	80	144.00	-	-	-	3	79	142.20	-	-	-
Ketchikan(Seaplane Docks) . . . Alaska	8	80	144.00	-	-	-	3	79	142.20	-	-	-
Seattle Washington, U.S.A.	3	100	180.00	6	80	144.00	3	99	178.20	X	X	X
BETWEEN AND	Fairbanks, Alaska			Galena, Alaska			Haines, Alaska			Hoonah, Alaska		
	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.
Juneau Alaska	1	60	108.00	1X	1X	1X	-	-	-	-	-	-
Ketchikan(Annette Island) . . . Alaska	1	75	135.00	1X	1X	1X	-	-	-	-	-	-
Ketchikan(Seaplane Docks) . . . Alaska	4	75	135.00	1X	1X	1X	-	-	-	-	-	-
Nome Alaska	1	50	90.00	1X	1X	1X	-	-	-	-	-	-
Petersburg Alaska	7	68	122.40	-	-	-	-	-	-	-	-	-
Seattle Washington, U.S.A.	1	105	189.00	1X	1X	1X	6	80	144.00	1X	1X	1X
Sitka Alaska	6	68	122.40	-	-	-	-	-	-	-	-	-
Whitehorse Y.T., Can.	1	50	90.00	1X	1X	1X	-	-	-	-	-	-
Wrangell Alaska	7	70	126.00	-	-	-	-	-	-	-	-	-
BETWEEN AND	Hydaburg, Alaska			Juneau, Alaska			Ketchikan, (Annette Island) Alaska			Ketchikan, (Seaplane Docks), Alaska		
	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.
Ketchikan(Annette Island) . . . Alaska	-	-	-	1	31	55.80	-	-	-	-	-	-
Ketchikan(Seaplane Docks) . . . Alaska	-	-	-	4	31	55.80	-	NS	NS	-	-	-
Nome Alaska	-	-	-	2	97	174.60	1	115	207.00	4	115	207.00
Seattle Washington, U.S.A.	X	X	X	1	66	118.80	1	49	88.20	4	53	95.40
Whitehorse Y.T., Can.	-	-	-	1	18	32.40	1	37	66.60	-	-	-
BETWEEN AND	Klawock, Alaska			Kodiak, Alaska			Naknek, Alaska			Nome, Alaska		
	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.	Route No.	O.V.	R.T.
Petersburg Alaska	-	-	-	-	-	-	-	-	-	7	99	178.20
Seattle Washington, U.S.A.	X	X	X	3	135	243.00	3	140	252.00	2	130	234.00
Sitka Alaska	-	-	-	-	-	-	-	-	-	6	99	178.20
Whitehorse Y.T., Can.	-	-	-	-	-	-	-	-	-	2	83	149.40
Wrangell Alaska	-	-	-	-	-	-	-	-	-	7	105	189.00

† For space available fare applicable from Fairbanks, Alaska to Seattle, Wash., U.S.A. refer to Page 4.

† Effective June 2, 1950. Issued on one (1) day's notice under Special Tariff Permission of the Civil Aeronautics Board, C.A.B. No. 3520.

X Denotes Cancellation.

For explanation of abbreviations and reference marks used but not explained on this page, see Page 2.

**ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS**

BETWEEN AND	Pelican, Alaska			Petersburg, Alaska			Seattle, Washington, U.S.A.		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Seattle. Washington, U.S.A.	6	80	144.00	5	70	126.00	-	-	-
Skagway. Alaska	-	-	-	-	-	-	6	80	144.00
Sitka. Alaska	-	-	-	-	-	-	6	80	126.00
Tenakee. Alaska	-	-	-	-	-	-	X	1X	1X
Whitehorse. Y.T., Can.	-	-	-	-	-	-	1	80	144.00
Wrangell. Alaska	-	-	-	-	-	-	1X	1X	1X
Yakutat. Alaska	-	-	-	-	-	-	3	95	171.00

SPACE AVAILABLE FARE IN UNITED STATES CURRENCY

FROM TO	Fairbanks, Alaska	
	Route No.	O.W.
Seattle, Washington, U.S.A.	9	75

SPECIAL RULES APPLICABLE TO SPACE AVAILABLE FARE

- (1) **FARES:** Tickets for Space Available Travel will be valid southbound from Fairbanks, Alaska only and will be on sale in Fairbanks, Alaska only.
- (2) **NO ADVANCE RESERVATIONS:** Transportation under this fare does not carry with it the privilege of advance reservations; Passengers will be accepted for travel under this fare only subject to space being available at the time of departure of aircraft from Fairbanks, Alaska.
- (3) **STOPOVERS AND LIMITS:** Tickets for Space Available Travel must be used for the flights for which space is obtained without stopovers, and are without further value on completion of such flights.
- (4) **OVERLOADS:** In the case of overload due to any reason whatsoever, if in the opinion of the carrier it is necessary to offload any passengers or cargo, passengers and their baggage traveling at the fare named herein will be removed before any full rate traffic.

Route Nos.	ROUTES	
	Routes Shown Are Applicable in Either Direction. Joint fares named in this tariff include cost of transfer at points of interchange.	
1	PAA direct ☐	
2	PAA via Fairbanks ☐	
3	PNA Juneau; PAA ☐	
4	PAA Ketchikan (Annette Island); ELLIS	
5	PAA Ketchikan (Annette Island) or Ketchikan (Seaplane Docks); ACA or ELLIS	
6	PAA Juneau; ACA ☐	
7	PAA Juneau; ACA or ELLIS ☐	
8	PNA, Juneau; PAA, Ketchikan (Annette Island); ELLIS ☐	
9	PAA direct - one direction only.	

For explanation of abbreviations and reference marks used but not explained on this page. see page 2.

☐ Passengers stopping over at Ketchikan are not permitted to remain at Annette Island but must proceed immediately to Ketchikan proper at their own expense. Transfer will be arranged, upon request, at the time ticket is issued.

X Denotes Cancellation.

† Effective June 2, 1950. Issued on one (1) day's notice under Special Tariff Permission of the Civil Aeronautics Board, C.A.B. No. 3520.

A. T. B. No. 39

Cancelling A.T.B. No. 38

(No supplement will be issued to this tariff
except for purpose of cancellation)

OFFICIAL FILE

C. A. B. No. 64

Cancels C.A.B. No. 63 and C.A.B. No. 54
(except portions suspended by C.A.B.
Order Serial No. E-4256)

R. C. LOUNSBURY, AGENT

Cancelled by CAB #71
Effective 10-20-50

LOCAL AND JOINT PASSENGER TARIFF No. P-AC-3

Cancelling Local and Joint Passenger Tariff No. P-AC-2

NAMING

**ALL YEAR ONE WAY and ROUND TRIP FARES
IN U. S. CY.**

Between Points in the UNITED STATES on the one hand
and Points in ALASKA on the other hand

Between Points in ALASKA

Between Points in the UNITED STATES on the one hand
and Points in CANADA on the other hand

Between Points in ALASKA on the one hand
and Points in CANADA on the other hand

The Points Named Herein Are in Continuous Alphabetical Order

Governed, except as otherwise provided herein, by rules shown in Rules and Regulations
Tariff No. RR-1, C.A.B. No. RR-1, A.T.B. No. 5*, and by Rules and Regulations Tariff No. CL-1,
C.A.B. No. CL-1, A.T.B. No. 6, governing Classified Travel, issued by the Agent named above,
including revisions thereto and succeeding issues thereof.

* Agent R. C. Lounsbury's series.

Issued on one day's notice under Special Tariff Permission of the Civil Aeronautics Board, C.A.B. No. 3645.

Rates, fares, charges and rules provided herein have been filed with or submitted to each
country as required by applicable international agreement.

ISSUED:
JUNE 30, 1950.

Issued by R. C. LOUNSBURY, AGENT
PAN AMERICAN WORLD AIRWAYS SYSTEM
28-19 Bridge Plaza North,
Long Island City 1, N. Y.

EFFECTIVE:
JULY 1, 1950.

APPLICATION OF TARIFF:

The fares, rates and charges shown in this tariff apply from airport to airport only, via the carrier(s), via the routings and between the points named herein and may be used in combination with fares, rates and charges of other carriers to or from points not listed herein.

PARTICIPATING CARRIERS:

This tariff is published and filed with the Civil Aeronautics Board and the Air Transport Board of Canada by R.C.Lounsbury, Agent, for and on behalf of the following named carrier(s) under authority of the powers of attorney indicated below which are filed with the Civil Aeronautics Board and the Air Transport Board of Canada:

CARRIER	ABBREVIATION	POWER OF ATTORNEY NOS.	
		C.A.B. No.	A.T.B. PA. 2
Alaska Coastal Airlines.	ACA	12	
Ellis Air Lines, Inc.	ELLIS	11	
Pacific Northern Air Lines, Inc.	PNA	13	
Pan American World Airways, Inc.	PAA	1	No.1

1 R.C.Lounsbury, acting under authority conferred on him as Alternate Agent in Powers of Attorney so referenced.

EXPLANATION OF ABBREVIATIONS:

Where abbreviation of the carrier's name appears it shall be held to designate the carrier shown opposite the corresponding designation in the above table.

A.T.B. - Air Transport Board of Canada.	Nos. - Numbers.
C.A.B. - Civil Aeronautics Board.	O.W. - One way.
CAA - Civil Aeronautics Administration.	R.T. - Round trip.
Can. - Canada.	USA - United States of America.
Inc. - Incorporated.	U.S.Cy. - United States Currency.
No. - Number.	Wash. - Washington.
	Y.T. - Yukon Territory.

EXPLANATION OF REFERENCE MARKS:

- ↓ - Denotes decreases.
- ↑ - Denotes increases.
- ▲ - Denotes changes in wording which result in neither increases nor decreases.
- - Denotes additions or new items.
- NS - No local passage sold.

ALPHABETICAL LIST OF POINTS FOR WHICH FARES ARE NAMED HEREIN SHOWING AIRPORTS (WHERE USED) THROUGH WHICH SUCH POINTS ARE SERVED.

CITIES		CARRIERS	AIRPORTS
Anchorage.	.Alaska	PNA	
Angoon	.Alaska	ACA	
Cordova.	.Alaska	PNA	
Craig.	.Alaska	ELLIS	
Fairbanks.	.Alaska	PAA	Ladd Field
Haines	.Alaska	ACA	
Hoonah	.Alaska	ACA	
Hydaburg	.Alaska	ELLIS	
Juneau	.Alaska	ACA, ELLIS, PAA, PNA	Juneau
Ketchikan (Annette Island)	.Alaska	ACA, ELLIS, PAA	Army Air Base
Ketchikan (Seaplane Docks)	.Alaska	ELLIS	
Klawock.	.Alaska	ELLIS	
Kodiak	.Alaska	PNA	
Naknek	.Alaska	PNA	
Nome	.Alaska	PAA	Mark Field
Pelican.	.Alaska	ACA	
Petersburg	.Alaska	ACA, ELLIS	
Seattle.	.Wash., USA	PAA	Boeing Field
Skagway.	.Alaska	ACA	
Sitka.	.Alaska	ACA	
Tenakee.	.Alaska	ACA	
Whitehorse	.Y.T., Can.	PAA	Whitehorse
Wrangell	.Alaska	ACA, ELLIS	
Yakutat.	.Alaska	PNA	

**ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS**

For Explanation of Route Numbers, see Page 4.

BETWEEN AND	Anchorage, Alaska			Angoon, Alaska			Cordova, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Ketchikan(Annette Island) . . Alaska	3	80	144.00	-	-	-	3	79	142.20
Ketchikan(Seaplane Docks) . . Alaska	8	80	144.00	-	-	-	8	79	142.20
Seattle Washington, U.S.A.	3	100	180.00	6	80	144.00	3	99	178.20
BETWEEN AND	Fairbanks, Alaska			Haines, Alaska					
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.			
Juneau. Alaska	1	60	108.00	-	-	-			
Ketchikan(Annette Island) . . Alaska	1	75	135.00	-	-	-			
Ketchikan(Seaplane Docks) . . Alaska	4	75	135.00	-	-	-			
Nome. Alaska	1	50	90.00	-	-	-			
Petersburg. Alaska	7	68	122.40	-	-	-			
Seattle Washington, U.S.A.	1	105	189.00	6	80	144.00			
Sitka Alaska	6	68	122.40	-	-	-			
Whitehorse. Y.T., Can.	1	50	90.00	-	-	-			
Wrangell. Alaska	7	70	126.00	-	-	-			
BETWEEN AND	Juneau, Alaska			Ketchikan, (Annette Island) Alaska			Ketchikan, (Seaplane Docks), Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Ketchikan(Annette Island) . . Alaska	1	31	55.80	-	-	-	-	-	-
Ketchikan(Seaplane Docks) . . Alaska	4	31	55.80	-	NS	NS	-	-	-
Nome. Alaska	2	97	174.60	1	115	207.00	4	115	207.00
Seattle Washington, U.S.A.	1	66	118.80	1	49	88.20	4	53	95.40
Whitehorse. Y.T., Can.	1	18	32.40	1	37	66.60	-	-	-
BETWEEN AND	Kodiak, Alaska			Naknek, Alaska			Nome, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Petersburg. Alaska	-	-	-	1	-	-	7	99	178.20
Seattle Washington, U.S.A.	3	135	243.00	3	140	252.00	2	130	234.00
Sitka Alaska	-	-	-	-	-	-	6	99	178.20
Whitehorse. Y.T., Can.	-	-	-	-	-	-	2	83	149.40
Wrangell. Alaska	-	-	-	-	-	-	7	105	189.00

For explanation of abbreviations and reference marks used but not explained on this page, see Page 2.

**ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS**

BETWEEN AND	Pelican, Alaska			Petersburg, Alaska			Seattle, Washington, U.S.A.		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Seattle. Washington, U.S.A.	6	80	144.00	5	70	126.00	-	-	-
Skagway. Alaska	-	-	-	-	-	-	6	80	144.00
Sitka. Alaska	-	-	-	-	-	-	6	70	126.00
Tenakee. Alaska	-	-	-	-	-	-	-	-	-
Whitehorse. Y.T., Can.	-	-	-	-	-	-	1	80	144.00
Wrangell. Alaska	-	-	-	-	-	-	-	-	-
Yakutat. Alaska	-	-	-	-	-	-	3	95	171.00

Route Nos.	ROUTES	
	Routes Shown Are Applicable in Either Direction. Joint fares named in this tariff include cost of transfer at points of interchange.	
1	PAA direct ☐	
2	PAA via Fairbanks ☐	
3	PNA Juneau; PAA ☐	
4	PAA Ketchikan (Annette Island); ELLIS	
5	PAA Ketchikan (Annette Island) or Ketchikan (Seaplane Docks); ACA or ELLIS	
6	PAA Juneau; ACA ☐	
7	PAA Juneau; ACA or ELLIS ☐	
8	PNA. Juneau; PAA, Ketchikan (Annette Island); ELLIS ☐	
9	X	

Space Available Fare previously appearing hereon has been suspended by the Civil Aeronautics Board under C.A.B. Order Serial No. E-4256.

For explanation of abbreviations and reference marks used but not explained on this page, see page 2.

☐ Passengers stopping over at Ketchikan are not permitted to remain at Annette Island but must proceed immediately to Ketchikan proper at their own expense. Transfer will be arranged, upon request, at the time ticket is issued.

X Denotes Cancellation.

A. T. B. No. 44,
Cancelling A.T.B. No. 39
(No supplement will be issued to this tariff
except for purpose of cancellation)

OFFICIAL FILE

C. A. B. No. 71
Cancels C.A.B. No. 64

R. C. LOUNSBURY, AGENT

LOCAL AND JOINT PASSENGER TARIFF No. P-AC-4

Cancelling Local and Joint Passenger Tariff No. P-AC-3

NAMING

ALL YEAR ONE WAY and ROUND TRIP FARES IN U. S. CY.

Between Points in the UNITED STATES on the one hand
and Points in ALASKA on the other hand

Between Points in ALASKA

Between Points in the UNITED STATES on the one hand
and Points in CANADA on the other hand

Between Points in ALASKA on the one hand
and Points in CANADA on the other hand

AND

Special fare for Travel on Cargo Aircraft from Fairbanks, Alaska to
Seattle, Washington, U. S. A.

The Points Named Herein Are in Continuous Alphabetical Order
Effective

Governed, except as otherwise provided herein, by rules shown in Rules and Regulations
Tariff No. RR-1, C.A.B. No. RR-1, A.T.B. No. 5*, and by Rules and Regulations Tariff No. CL-1,
C.A.B. No. CL-1, A.T.B. No. 6, governing Classified Travel, issued by the Agent named above,
including revisions thereto and succeeding issues thereof.

* Agent R. C. Lounsbury's series.

Rates, fares, charges and rules provided herein have been filed with or submitted to each
country as required by applicable international agreement.

ISSUED:
SEPTEMBER 20, 1950.

Issued by R. C. LOUNSBURY, AGENT
PAN AMERICAN WORLD AIRWAYS SYSTEM
28-19 Bridge Plaza North,
Long Island City 1, N. Y.

EFFECTIVE:
OCTOBER 20, 1950.

APPLICATION OF TARIFF:

The fares, rates and charges shown in this tariff apply from airport to airport only, via the carrier(s), via the routings and between the points named herein and may be used in combination with fares, rates and charges of other carriers to or from points not listed herein.

PARTICIPATING CARRIERS:

This tariff is published and filed with the Civil Aeronautics Board and the Air Transport Board of Canada by R.C.Lounsbury, Agent, for and on behalf of the following named carrier(s) under authority of the powers of attorney indicated below which are filed with the Civil Aeronautics Board and the Air Transport Board of Canada:

CARRIER	ABBREVIATION	POWER OF ATTORNEY NOS.	
		C.A.B. No.	A.T.B. PA. 2
Alaska Coastal Airlines.	ACA	12	
Ellis Air Lines, Inc.	ELLIS	11	
Pacific Northern Air Lines, Inc.	PNA	13	
Pan American World Airways, Inc.	PAA	1	No.1

1 R.C.Lounsbury, acting under authority conferred on him as Alternate Agent in Powers of Attorney so referenced.

EXPLANATION OF ABBREVIATIONS:

Where abbreviation of the carrier's name appears it shall be held to designate the carrier shown opposite the corresponding designation in the above table.

A.T.B. - Air Transport Board of Canada.	Nos. - Numbers.
C.A.B. - Civil Aeronautics Board.	O.W. - One way.
CAA - Civil Aeronautics Administration.	R.T. - Round trip.
Can. - Canada.	USA - United States of America.
Inc. - Incorporated.	U.S.Cy. - United States Currency.
No. - Number.	Wash. - Washington.
	Y.T. - Yukon Territory.

EXPLANATION OF REFERENCE MARKS:

- ↓ - Denotes decreases.
- ↑ - Denotes increases.
- ▲ - Denotes changes in wording which result in neither increases nor decreases.
- - Denotes additions or new items.
- NS - No local passage sold.

ALPHABETICAL LIST OF POINTS FOR WHICH FARES ARE NAMED HEREIN SHOWING AIRPORTS (WHERE USED) THROUGH WHICH SUCH POINTS ARE SERVED.

CITIES		CARRIERS	AIRPORTS
Anchorage.	.Alaska	PNA	
Angoon	.Alaska	ACA	
Cordova.	.Alaska	PNA	
Craig.	.Alaska	ELLIS	
Fairbanks.	.Alaska	PAA	Ladd Field
Haines	.Alaska	ACA	
Hoonah	.Alaska	ACA	
Hydaburg	.Alaska	ELLIS	
Juneau	.Alaska	ACA, ELLIS, PAA, PNA	Juneau
Ketchikan (Annette Island)	.Alaska	ACA, ELLIS, PAA	Army Air Base
Ketchikan (Seaplane Docks)	.Alaska	ELLIS	
Klawock.	.Alaska	ELLIS	
Kodiak	.Alaska	PNA	
Naknek	.Alaska	PNA	
Nome	.Alaska	PAA	Mark Field
Pelican.	.Alaska	ACA	
Petersburg	.Alaska	ACA, ELLIS	
Seattle.	.Wash., USA	PAA	Boeing Field
Skagway.	.Alaska	ACA	
Sitka.	.Alaska	ACA	
Tenakee.	.Alaska	ACA	
Whitehorse	.Y.T., Can.	PAA	Whitehorse
Wrangell	.Alaska	ACA, ELLIS	
Yakutat.	.Alaska	PNA	

ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS

For Explanation of Route Numbers, see Page 4.

BETWEEN AND	Anchorage, Alaska			Angoon, Alaska			Cordova, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Ketchikan(Annette Island) . . Alaska	3	80	144.00	-	-	-	3	79	142.20
Ketchikan(Seaplane Docks) . . Alaska	8	80	144.00	-	-	-	8	79	142.20
Seattle Washington, U.S.A.	3	100	180.00	6	80	144.00	3	99	178.20
BETWEEN AND	Fairbanks, Alaska			Haines, Alaska					
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.			
Juneau Alaska	1	60	108.00	-	-	-			
Ketchikan(Annette Island) . . Alaska	1	75	135.00	-	-	-			
Ketchikan(Seaplane Docks) . . Alaska	4	75	135.00	-	-	-			
Nome Alaska	1	50	90.00	-	-	-			
Petersburg Alaska	7	68	122.40	-	-	-			
Seattle Washington, U.S.A.	1	*105	189.00	6	80	144.00			
Sitka Alaska	6	68	122.40	-	-	-			
Whitehorse Y.T., Can.	1	50	90.00	-	-	-			
Wrangell Alaska	7	70	126.00	-	-	-			
BETWEEN AND	Juneau, Alaska			Ketchikan, (Annette Island) Alaska			Ketchikan, (Seaplane Docks), Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Ketchikan(Annette Island) . . Alaska	1	31	55.80	-	-	-	-	-	-
Ketchikan(Seaplane Docks) . . Alaska	4	31	55.80	-	NS	NS	-	-	-
Nome Alaska	2	97	174.60	1	115	207.00	4	115	207.00
Seattle Washington, U.S.A.	1	66	118.80	1	49	88.20	4	53	95.40
Whitehorse Y.T., Can.	1	18	32.40	1	37	66.60	-	-	-
BETWEEN AND	Kodiak, Alaska			Naknek, Alaska			Nome, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Petersburg Alaska	-	-	-	-	-	-	7	99	178.20
Seattle Washington, U.S.A.	-	135	243.00	3	140	252.00	2	130	234.00
Sitka Alaska	-	-	-	-	-	-	6	99	178.20
Whitehorse Y.T., Can.	-	-	-	-	-	-	2	83	149.40
Wrangell Alaska	-	-	-	-	-	-	7	105	189.00

* For Special Southbound fare for travel on Cargo Aircraft from Fairbanks, Alaska to Seattle, Wash., U.S.A., refer to page 4.

For explanation of abbreviations and reference marks used but not explained on this page, see Page 2.

ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS

BETWEEN AND	Pelican, Alaska			Petersburg, Alaska			Seattle, Washington, U.S.A.		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Seattle. Washington, U.S.A.	6	80	144.00	5	70	126.00	-	-	-
Skagway. Alaska	-	-	-	-	-	-	6	80	144.00
Sitka. Alaska	-	-	-	-	-	-	6	70	126.00
Tenakee. Alaska	-	-	-	-	-	-	-	-	-
Whitehorse. Y.T., Can.	-	-	-	-	-	-	1	80	144.00
Wrangell. Alaska	-	-	-	-	-	-	-	-	-
Yakutat. Alaska	-	-	-	-	-	-	3	95	171.00

■ SPECIAL FARE FOR TRAVEL ON CARGO AIRCRAFT

FROM TO	Fairbanks, Alaska		
	Route No.	O.W.	R.T.
Seattle, Wash. U.S.A.	1	175.00	162.00

■ RULES APPLICABLE TO SPECIAL FARE FOR TRAVEL ON CARGO AIRCRAFT

- (1) **FARES:**
 (a) **ONE WAY FARE:** One way fare is available for travel on Cargo aircraft southbound from Fairbanks, Alaska only, on Cargo Flights designated PA 910 and PA 912 in GS, CAB-2.
 (b) **ROUND TRIP FARE:** This fare is available for travel southbound on Cargo Flights as indicated (a) above and northbound on regularly scheduled passenger service.
- (2) **STOPOVERS AND LIMITS:** Tickets for the southbound Special Fare subject to cargo loads must be used for the flights for which space is obtained without stopovers, and are without further value on completion of such flights.
- (3) **OVERLOADS:** In the case of overload on the Southbound aircraft due to any reason whatsoever, if in the opinion of the carrier it is necessary to offload any passengers, passengers and their baggage travelling at the fare named herein will be removed before any cargo traffic.
- (4) **EXPIRATION:** The above named fares will expire June 30, 1951.

Route Nos.	ROUTES	
	Routes Shown Are Applicable In Either Direction. Joint fares named in this tariff include cost of transfer at points of interchange.	
1	PAA direct ☐	
2	PAA via Fairbanks ☐	
3	PNA Juneau; PAA ☐	
4	PAA Ketchikan (Annette Island); ELLIS	
5	PAA Ketchikan (Annette Island) or Ketchikan (Seaplane Docks); ACA or ELLIS	
6	PAA Juneau; ACA ☐	
7	PAA Juneau; ACA or ELLIS ☐	
8	PNA, Juneau; PAA, Ketchikan (Annette Island); ELLIS ☐	

For explanation of abbreviations and reference marks used but not explained on this page, see Page 2.

- ☐ Passengers stopping over at Ketchikan are not permitted to remain at Annette Island but must proceed immediately to Ketchikan proper at their own expense. Transfer will be arranged, upon request, if at the time ticket is issued.

OFFICIAL FILE

C. A. B. No. 73
Cancels C.A.B. No. 71

R. C. LOUNSBURY, AGENT

LOCAL AND JOINT PASSENGER TARIFF No. P-AC-5
Cancelling Local and Joint Passenger Tariff No. P-AC-4

NAMING

**ALL YEAR ONE WAY and ROUND TRIP FARES
IN U. S. CY.**

Between Points in the UNITED STATES on the one hand
and Points in ALASKA on the other hand

Between Points in ALASKA

Between Points in the UNITED STATES on the one hand
and Points in CANADA on the other hand

Between Points in ALASKA on the one hand
and Points in CANADA on the other hand

AND

Special fare for Travel on Cargo Aircraft from Fairbanks, Alaska to
Seattle, Washington, U. S. A.

The Points Named Herein Are in Continuous Alphabetical Order

Governed, except as otherwise provided herein, by rules shown in Rules and Regulations Tariff No. RR-1, C.A.B. No. RR-1, A.T.B. No. 5*, and by Rules and Regulations Tariff No. CL-1, C.A.B. No. CL-1, A.T.B. No. 6, governing Classified Travel, issued by the Agent named above, including revisions thereto and succeeding issues thereof.

* Agent R. C. Lounsbury's series.

Rates, fares, charges and rules provided herein have been filed with or submitted to each country as required by applicable international agreement.

ISSUED:
OCTOBER 19, 1950.

Issued by R. C. LOUNSBURY, AGENT
PAN AMERICAN WORLD AIRWAYS SYSTEM
28-19 Bridge Plaza North,
Long Island City 1, N. Y.

EFFECTIVE:
NOVEMBER 18, 1950.
(Except as noted)

APPLICATION OF TARIFF:

The fares, rates and charges shown in this tariff apply from airport to airport only, via the carrier(s), via the routings and between the points named herein and may be used in combination with fares, rates and charges of other carriers to or from points not listed herein.

PARTICIPATING CARRIERS:

This tariff is published and filed with the Civil Aeronautics Board and the Air Transport Board of Canada by R.C.Lounsbury, Agent, for and on behalf of the following named carrier(s) under authority of the powers of attorney indicated below which are filed with the Civil Aeronautics Board and the Air Transport Board of Canada:

CARRIER	ABBREVIATION	POWER OF ATTORNEY NOS.	
		C.A.B. No.	A.T.B. PA. 2
Alaska Coastal Airlines.	ACA	12	
Ellis Air Lines, Inc.	ELLIS	11	
Pacific Northern Air Lines, Inc.	PNA	13	
Pan American World Airways, Inc.	PAA	1	No.1

1 R.C.Lounsbury, acting under authority conferred on him as Alternate Agent in Powers of Attorney so referenced.

EXPLANATION OF ABBREVIATIONS:

Where abbreviation of the carrier's name appears it shall be held to designate the carrier shown opposite the corresponding designation in the above table.

A.T.B. - Air Transport Board of Canada.	Nos. - Numbers.
C.A.B. - Civil Aeronautics Board.	O.W. - One way.
CAA - Civil Aeronautics Administration.	R.T. - Round trip.
Can. - Canada.	USA - United States of America.
Inc. - Incorporated.	U.S.Cy.-United States Currency.
No. - Number.	Wash. - Washington.
	Y.T. - Yukon Territory.

EXPLANATION OF REFERENCE MARKS:

- ↓ - Denotes decreases.
- ↑ - Denotes increases.
- Δ - Denotes changes in wording which result in neither increases nor decreases.
- - Denotes additions or new items.
- NS - No local passage sold.

ALPHABETICAL LIST OF POINTS FOR WHICH FARES ARE NAMED HEREIN SHOWING AIRPORTS (WHERE USED) THROUGH WHICH SUCH POINTS ARE SERVED.

CITIES		CARRIERS	AIRPORTS
Anchorage.	.Alaska	PNA	
Angoon.	.Alaska	ACA	
Cordova.	.Alaska	PNA	
Craig.	.Alaska	ELLIS	
Fairbanks.	.Alaska	PAA	Ladd Field
Haines.	.Alaska	ACA	
Hoonah.	.Alaska	ACA	
Hydaburg.	.Alaska	ELLIS	
Juneau.	.Alaska	ACA, ELLIS, PAA, PNA	Juneau
Ketchikan (Annette Island).	.Alaska	ACA, ELLIS, PAA	Army Air Base
Ketchikan (Seaplane Docks).	.Alaska	ELLIS	
Klawock.	.Alaska	ELLIS	
Kodiak.	.Alaska	PNA	
Naknek.	.Alaska	PNA	
Nome.	.Alaska	PAA	Mark Field
Pelican.	.Alaska	ACA	
Petersburg.	.Alaska	ACA, ELLIS	
Seattle.	.Wash., USA	PAA	Boeing Field
Skagway.	.Alaska	ACA	
Sitka.	.Alaska	ACA	
Tenakee.	.Alaska	ACA	
Whitehorse.	.Y.T., Can.	PAA	Whitehorse
Wrangell.	.Alaska	ACA, ELLIS	
Yakutat.	.Alaska	PNA	

ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS

For Explanation of Route Numbers, see Page 4.

BETWEEN AND	Anchorage, Alaska			Angoon, Alaska			Cordova, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Ketchikan(Annette Island) . . Alaska	3	80	144.00	-	-	-	3	79	142.20
Ketchikan(Seaplane Docks) . . Alaska	8	80	144.00	-	-	-	8	79	142.20
Seattle Washington, U.S.A.	3	100	180.00	6	80	144.00	3	99	178.20
BETWEEN AND	Fairbanks, Alaska			Haines, Alaska					
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.			
Juneau. Alaska	1	60	108.00	-	-	-			
Ketchikan(Annette Island) . . Alaska	1	75	135.00	-	-	-			
Ketchikan(Seaplane Docks) . . Alaska	4	75	135.00	-	-	-			
Nome. Alaska	1	50	90.00	-	-	-			
Petersburg. Alaska	7	68	122.40	-	-	-			
Seattle Washington, U.S.A.	1	*105	189.00	6	80	144.00			
Sitka Alaska	6	68	122.40	-	-	-			
Whitehorse. Y.T., Can.	1	50	90.00	-	-	-			
Wrangell. Alaska	7	70	126.00	-	-	-			
BETWEEN AND	Juneau, Alaska			Ketchikan, (Annette Island) Alaska			Ketchikan, (Seaplane Docks), Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Ketchikan(Annette Island) . . Alaska	1	31	55.80	-	-	-	-	-	-
Ketchikan(Seaplane Docks) . . Alaska	4	31	55.80	-	NS	NS	-	-	-
Nome. Alaska	2	97	174.60	1	115	207.00	4	115	207.00
Seattle Washington, U.S.A.	1	66	118.60	1	49	88.20	4	53	95.40
Whitehorse. Y.T., Can.	1	18	32.40	1	37	66.60	-	-	-
BETWEEN AND	Kodiak, Alaska			Naknek, Alaska			Nome, Alaska		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Petersburg. Alaska	-	-	-	-	-	-	7	99	178.20
Seattle Washington, U.S.A.	3	135	243.00	3	140	252.00	2	130	234.00
Sitka Alaska	-	-	-	-	-	-	6	99	178.20
Whitehorse. Y.T., Can.	-	-	-	-	-	-	2	83	149.40
Wrangell. Alaska	-	-	-	-	-	-	7	105	189.00

* For Special Southbound fare for travel on Cargo Aircraft from Fairbanks, Alaska to Seattle, Wash., U.S.A., refer to page 4.

For explanation of abbreviations and reference marks used but not explained on this page, see Page 2.

**ONE WAY AND ROUND TRIP FARES IN U.S.CY.
FARES ARE SHOWN IN DOLLARS**

BETWEEN AND	Pelican, Alaska			Petersburg, Alaska			Seattle, Washington, U.S.A.		
	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.	Route No.	O.W.	R.T.
Seattle. Washington, U.S.A.	6	80	144.00	5	70	126.00	-	-	-
Skagway. Alaska	-	-	-	-	-	-	6	80	144.00
Sitka. Alaska	-	-	-	-	-	-	6	70	126.00
Tenakee. Alaska	-	-	-	-	-	-	-	-	-
Whitehorse. Y.T., Can.	-	-	-	-	-	-	1	80	144.00
Wrangell. Alaska	-	-	-	-	-	-	-	-	-
Yakutat. Alaska	-	-	-	-	-	-	3	95	171.00

SPECIAL FARE FOR TRAVEL ON CARGO AIRCRAFT

FROM TO	Fairbanks, Alaska		
	Route No.	O.W.	R.T.
Seattle, Wash. U.S.A.	19	75.00	1X

RULES APPLICABLE TO SPECIAL FARE FOR TRAVEL ON CARGO AIRCRAFT

- (1) **FARES:**
 (a) **ONE WAY FARE:** One way fare is available for travel on Cargo aircraft southbound from Fairbanks, Alaska only, on Cargo Flights designated PA 910 and PA 912 in GS, CAB-2.
 (b) 1X
 (c) The above One Way fare is not to be used for construction of Circle, Open-Jaw or Round Trip fares.
- (2) **STOPOVERS AND LIMITS:** Tickets for the southbound Special Fare subject to cargo loads must be used for the flights for which space is obtained without stopovers, and are without further value on completion of such flights.
- (3) **OVERLOADS:** In the case of overload on the Southbound aircraft due to any reason whatsoever, if in the opinion of the carrier it is necessary to offload any passengers, passengers and their baggage travelling at the fare named herein will be removed before any cargo traffic.
- (4) **EXPIRATION:** The above named fares will expire June 30, 1951.

Route Nos.	ROUTES	
	Routes Shown Are Applicable In Either Direction. Joint fares named in this tariff include cost of transfer at points of interchange.	
1	PAA direct ☐	
2	PAA via Fairbanks ☐	
3	PNA Juneau; PAA ☐	
4	PAA Ketchikan (Annette Island); ELLIS	
5	PAA Ketchikan (Annette Island) or Ketchikan (Seaplane Docks); ACA or ELLIS	
6	PAA Juneau; ACA ☐	
7	PAA Juneau; ACA or ELLIS ☐	
8	PNA, Juneau; PAA, Ketchikan (Annette Island); ELLIS ☐	
19	PAA direct - one direction only.	

For explanation of abbreviations and reference marks used but not explained on this page, see Page 2.

☐ Passengers stopping over at Ketchikan are not permitted to remain at Annette Island but must proceed immediately to Ketchikan proper at their own expense. Transfer will be arranged, upon request, if at the time ticket is issued.

† Effective October 20, 1950. Issued on one (1) day's notice under Special Tariff Permission of the Civil Aeronautics Board, C.A.B. No. 3924.

PAN AMERICAN WORLD AIRWAYS SYSTEM

Page 12—46th Revision
Cancelling Page 12—45th Revision

SEATTLE—ALASKA—CANADA SERVICES

9 SEATTLE—KETCHIKAN—JUNEAU—WHITEHORSE—FAIRBANKS—NOME

C o d e	CARGO MAIL ONLY		PA923	PA905	PA903	PA907	PA901	Pan American Airways, Inc. (PAA)								PA902	PA908	PA904	PA906	PA924	CARGO MAIL ONLY		C o d e
	PA909	PA911						PA910	PA912														
B F I	Tu Sa	Th	Daily	Tu Sa	Mo Th	Fr	Sa We	✕								Mo Th	Fr	We Sa	Mo Th	Daily	Tu Sa	Th	B F I
KTN	0:15	3:00	7:30	9:30	0:15	9:30	0:15	Lv SEATTLE, Wash., U.S.A.	PST	Ar	1:20	18:00	5:30	20:35	21:00	18:00	21:30	KTN					
KTN	↓	↓	11:15	↓	↓	↓	↓	Lv KETCHIKAN (Annette Is.), Alas.	"	Lv	↑	↑	↑	↑	17:15	↑	↑	KTN					
JNU			11:45	15:00				Lv KETCHIKAN (Annette Is.), Alas.	"	Ar				16:45			JNU						
JNU			13:45	15:30				Lv JUNEAU, Alaska	"	Lv				15:05	14:45		JNU						
YXY			↓	15:50				Lv JUNEAU, Alaska	"	Lv				14:20			YXY						
YXY			↓	16:10	↓			Lv WHITEHORSE, Y. T., Can.	135°	Lv			Tu Fr	12:00	↓		YXY						
FBK				16:10	6:15	15:30	↓	Lv WHITEHORSE, Y. T., Can.	"	Ar	Su We	8:00	Sa	11:40			FBK						
FBK	6:15	9:00		17:50			7:15	Lv FAIRBANKS (Ladd Field), Alaska	150°	Lv	15:20			8:00			FBK						
MKF							9:05	Lv FAIRBANKS (Ladd Field), Alaska	"	Ar	14:20				8:00			MKF					
								Lv NOME, Alaska	165°	Lv	10:30												
FBK								Lv FAIRBANKS, Alaska	150°	Ar								FBK					
MCG								Lv McGRATH, Alaska X	"	Lv								MCG					
ANI								Lv ANIAK, Alaska X	"	Lv								ANI					
BRT								Lv RETHFI, Alaska X	"	Lv								BRT					

304 47th Apr. 19 12
7:10 19:50

MERIDIAN TIMES: The arrival and departure times shown in these tables are Meridian Times west of Greenwich, 15° difference in longitude equals 1 hour change in time.

PST—Pacific Standard Time. (120°—120th Meridian Time.)

135°—135th Meridian Time, etc.

Bold face numbers are Flight Numbers.

Meals: Complimentary meals are served aloft or on the ground at conventional meal times while passengers are enroute.

✕—Douglas DC-4.

X—Service temporarily suspended.

THIS PAGE ISSUED TO SHOW:

1. Addition of Flight PA907 between Seattle and Fairbanks.
2. Increase in frequency and changes in times of operation, Flights PA904, PA923 and PA924.
3. Changes in routing, days and times of operation, Flight PA906.
4. Changes in routing and times of operation, Flight PA905.
5. Changes in times of operation, Flights PA901, PA903, PA909, PA910 and PA912.
6. Change in day of operation, Flight PA908.

Issued: April 17, 1950

Issued by
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PAN AMERICAN WORLD AIRWAYS SYSTEM

Page 12—47th Revision
Cancelling Page 12—46th Revision

SEATTLE—ALASKA—CANADA SERVICES

9 SEATTLE—KETCHIKAN—JUNEAU—WHITEHORSE—FAIRBANKS—NOME

C o d e	CARGO AND MAIL ONLY							Pan American World Airways, Inc. (PAA)										CARGO AND MAIL ONLY						C o d e
	PA909	PA911	PA923	PA905	PA903	PA907	PA901											PA902	PA908	PA904	PA906	PA924	PA910		PA912
	♂	♂	♂	♂	♂	♂	♂											♂	♂	♂	♂	♂	♂	♂
	Tu Sa	Th	Daily	Tu Sa	Mo Th	Fr	Su We											Mo Th	Fr	We Sa	Mo Th	Daily	Tu Sa	Th
BFI	0:15	3:00	7:30	9:30	0:15	9:30	0:15	Lv SEATTLE, Wash., U.S.A.	PST	Ar	3:20	18:00	5:30	20:35	21:00	18:00	21:30	BFI						
ANN			11:15	↓				Ar KETCHIKAN (Annette Is.), Alas.	"	Lv	↑	↑	↑	↑	17:15	↑	↑	ANN						
ANN			11:45	↓				Lv KETCHIKAN (Annette Is.), Alas.	"	Ar	↑	↑	↑	↑	16:45	↑	↑	ANN						
JNU			13:45	15:00				Ar JUNEAU, Alaska.	"	Lv				15:05	14:45			JNU						
JNU			↓	15:30				Lv JUNEAU, Alaska.	"	Ar				14:20	↓			JNU						
YXY			↓	15:50				Ar WHITEHORSE, Y. T., Can.	135°	Lv			Tu Fr	12:00	↓			YXY						
YXY			↓	16:10	↓			Lv WHITEHORSE, Y. T., Can.	"	Ar	Su We		Sa	11:40				YXY						
FBK	6:15	9:00		17:50	0:15	15:30	6:15	Ar FAIRBANKS (Ladd Field), Alaska.	150°	Lv	17:20	8:00	19:30	8:00		8:00	11:30	FBK						
FBK							7:15	Lv FAIRBANKS (Ladd Field), Alaska.	"	Ar	16:20							FBK						
MKF							9:05	Ar NOME, Alaska.	165°	Lv	12:30							MKF						
FBK								Lv FAIRBANKS, Alaska.	150°	Ar								FBK						
MCG								Ar McGRATH, Alaska.	"	Lv								MCG						
ANI								Ar ANIAK, Alaska.	"	Lv								ANI						
BET								Ar RETHE, Alaska.	"	Lv								BET						

18th - see page 12
11-1-50

THIS PAGE ISSUED TO SHOW:

Changes in times of operation, Flight PA902.

MERIDIAN TIMES: The arrival and departure times shown in these tables are Meridian Times west of Greenwich, 15° difference in longitude equals 1 hour change in time.

PST—Pacific Standard Time. (120°—120th Meridian Time.)

135°—135th Meridian Time, etc.

Bold face numbers are Flight Numbers.

Meals: Complimentary meals are served aloft or on the ground at conventional meal times while passengers are enroute.

Y—Douglas DC-4.

X—Service temporarily suspended.

Issued: June 23, 1950

Issued by
WENDELL R. STEVENS, AGENT
28-19 Bridge Plaza North, Long Island City 1, N.Y.

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PAN AMERICAN WORLD AIRWAYS SYSTEMPage 12-48th Revision
Cancelling Page 12-47th Revision**SEATTLE - ALASKA - CANADA SERVICES****9 SEATTLE - KETCHIKAN - JUNEAU - WHITEHORSE - FAIRBANKS - NOME**

C o d e	CARGO AND MAIL ONLY		PA923	PA905	PA903	PA901	Pan American World Airways, Inc. (PAA)								PA902	PA908	PA904	PA906	PA924	CARGO AND MAIL ONLY		C o d e
	PA909	PA911					PA910	PA912														
	o	o					o	o														
	Tu Sa	Th	Su Mo We Th	Tu Sa	Mo Th Fr	Su We												Tu Sa	Th			
BFI	0:15	3:00	7:00	7:00	0:15	0:15	Lv SEATTLE, Wash., U.S.A.	PST	Ar	1:20	18:00	4:00	20:50	20:30	18:30	21:30	BFI					
ANN	↓	↓	10:45	10:45	↓	↓	Ar KETCHIKAN (Annette Is.), Alas.	"	Lv	↑	↑	↑	17:05	16:45	↑	↑	ANN					
ANN			11:15	11:15			Lv KETCHIKAN (Annette Is.), Alas.	"	Ar				16:35	16:15			ANN					
JNU			13:15	13:15			Ar JUNEAU, Alaska	"	Lv				14:35	14:15			JNU					
JNU			13:45	13:45			Lv JUNEAU, Alaska	"	Ar				14:05				JNU					
YXY			.....	14:05			Ar WHITEHORSE, Y.T., Can.	135°	Lv				11:45				YXY					
YXY	↓	↓	.....	14:35	↓	↓	Lv WHITEHORSE, Y.T., Can.	"	Ar	Su We		Tu Sa	11:25	.....			YXY					
FBK	6:15	9:00	.....	16:15	6:15	6:15	Ar FAIRBANKS (Ladd Field), Alaska ..	150°	Lv	15:20	8:00	18:00	7:45	.....	8:30	11:30	FBK					
FBK			.....			7:15	Lv FAIRBANKS (Ladd Field), Alaska ..	"	Ar	14:20				.....			FBK					
MKF			.....			9:05	Ar NOME, Alaska	165°	Lv	10:30				.....			MKF					
FBK							Lv FAIRBANKS, Alaska	150°	Ar								FBK					
MCG							Ar McGRATH, Alaska X	"	Lv								MCG					
ANI							Ar ANIAK, Alaska X	"	Lv								ANI					
BET							Ar BETHEL, Alaska X	"	Lv								BET					

MERIDIAN TIMES: The arrival and departure times shown in these tables are Meridian Times west of Greenwich; 15° difference in longitude equals 1 hour change in time.

PST—Pacific Standard Time. (120°—120th Meridian Time)

135°—135th Meridian Time, etc.

Bold face numbers are Flight Numbers.

Meals: Complimentary meals are served aloft or on the ground at conventional meal times while passengers are enroute.

○—Douglas DC-4.

X—Service temporarily suspended.

THIS PAGE ISSUED TO SHOW:

1. Changes in routing and times of operation, Flights PA905 and PA906.
2. Changes in frequency and times of operation, Flights PA904, PA923 and PA924.
3. Changes in times of operation, Flight PA902.
4. Cancellation of Flight PA907.

Issued: October 6, 1950

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28-19 Bridge Plaza North, Long Island City 1, N.Y.

Effective: November 1, 1950

BRIEF FOR RESPONDENT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10914

AIR TRANSPORT ASSOCIATES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

ON PETITION FOR REVIEW OF ORDERS OF THE CIVIL AERONAUTICS BOARD

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EMORY T. NUNNELEY, JR.,

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Civil Aeronautics Board.

United States Court of Appeals

*For the
District of Columbia Circuit*

FILED JUL 3 1951

Joseph W. Stewart

CLERK

STATEMENT OF QUESTIONS PRESENTED

In the opinion of the respondent the questions presented are:

1. Whether the Civil Aeronautics Act empowers the Civil Aeronautics Board to dismiss a complaint challenging the lawfulness of a tariff without holding a hearing.

2. If the Board has such power, whether it abused its discretion in dismissing petitioner's protest against a particular tariff, and in denying reconsideration of such dismissal.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10914

AIR TRANSPORT ASSOCIATES, INC., PETITIONER

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

ON PETITION FOR REVIEW OF ORDERS OF THE CIVIL AERONAUTICS BOARD

BRIEF FOR RESPONDENT

COUNTERSTATEMENT OF THE CASE

This case involves a challenge to the validity of the action of the Civil Aeronautics Board (Board) in disposing of a protest of petitioner to a tariff filed with the Board.

Pursuant to section 403 of the Civil Aeronautics Act of 1938, as amended (52 Stat. 992, 49 U.S.C. 483, *infra*, p. 3) and Parts 221 and 222 of the Board's Economic Regulations (14 C.F.R. (1949 Ed. Supp.) 221 and 222), Pan American World Airways, Inc. (Pan American) proposed to establish a special passenger fare for travel on cargo aircraft from Fairbanks, Alaska to Seattle, Washington. The proposal was incorporated in Agent R. C. Lounsbury's Local and Joint Passenger Tariff No. P-AC-4, C.A.B. No. 71 canceling C.A.B. No. 64, issued September 20, 1950, to be effective October 20, 1950 (J. App. 90A). Specifically, the tariff pro-

vided for a one way passenger fare of \$75.00 on cargo aircraft southbound from Fairbanks to Seattle "on cargo flights designated PA 910 and PA 912 in GS, CAB 2,"¹ that tickets were "subject to cargo loads" and had to be used "without stopovers", that in the case of overloads requiring offloading, "passengers and their baggage traveling at the fare named herein will be removed before any cargo traffic", and that the fare would expire on June 30, 1951 (J. App. 93A).²

Acting "pursuant to Sections 2, 403, 404 and 1002" of the Act, petitioner filed a protest with the Board with respect to the foregoing tariff, requesting the Board to suspend it and to institute an investigation into its lawfulness (J. App. 65A-69A). On October 18, 1950, prior to the effectiveness of the protested tariff, the Board adopted an order (E-4743) dismissing petitioner's protest (J. App. 70A). The basis for the dismissal was its finding that the "protest does not state facts which warrant suspension or investigation or other action" (J. App. 70A). Petitioner filed a timely petition for reconsideration of this order, reiterating the allegations of its protest and calling upon the Board to "answer" them (J. App. 71A-75A). On December 8, 1950, the Board adopted an order (E-4919) denying this petition upon findings that (1) petitioner's protest and petition "contain generalized allegations and conclusions but do not include facts which would support the allegations and conclusions contained therein;" and (2) "neither the original protest nor the petition for reconsideration state facts which warrant any action by the Board" (J. App. 76A-77A).

The petition for review challenges the validity of the Board's orders (E-4743 and E-4919) dismissing petitioner's

¹ The appropriate pages from Pan American's schedules (GS-CAB-2) showing the cargo flights in question appear in the Joint Appendix at pages 98A through 100A.

² The tariff also provided for a round trip fare of \$162.00 (J. App. 93A). However, the round trip fare was cancelled by Pan American on one day's notice, before it became effective (J. App. 97A). It is not involved in this proceeding (J. App. 70A) and petitioner has made no reference to it.

protest and denying its petition for reconsideration (J. App. 1A-31A).

Subsequent to the filing of the petition for review, on May 29, 1951, C.A.B. No. 90 was filed with the Board on behalf of Pan American. This tariff, effective June 28, 1951, provided for a continuation until June 30, 1952, of the same special passenger fare for travel on cargo aircraft on the same terms as was provided in C.A.B. No. 71, the tariff which petitioner challenged before the Board and in this proceeding. C.A.B. No. 90 also had the effect of advancing the expiration date of the special passenger fare for travel in cargo aircraft provided in C.A.B. No. 71 from June 30 to June 28, 1951. During the 30 day period between the filing of C.A.B. No. 90 and its effective date, petitioner did not protest it or seek to have it investigated or suspended, and the Board took no such action on its own initiative.

STATUTES AND REGULATIONS INVOLVED

With the exception of the provisions set forth below, petitioner has reproduced in its brief (pp. 3-10) the pertinent provisions of the Civil Aeronautics Act of 1938, as amended,³ the Administrative Procedure Act,⁴ and the Civil Aeronautics Board's Rules of Practice in Economic Proceedings.⁵

CIVIL AERONAUTICS ACT:

TARIFFS OF AIR CARRIERS

Filing of Tariffs Required

Sec. 403 [49 U.S.C. 483] (a) Every air carrier and every foreign air carrier shall file with the * * * [Board], and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any

³ Act of June 23, 1938, 52 Stat. 973, 49 U.S.C. 401 *et seq.*, Reorg. Plan No. IV, Sec. 7, effective June 30, 1940, 5 F. R. 2421, 54 Stat. 1235, 49 U.S.C. 401 *et seq.*

⁴ Act of June 11, 1946, 60 Stat. 237, 5 U.S.C. 1001 *et seq.*

⁵ 14 C.F.R. (1949 Ed. Supp.) 302.1 *et seq.*

other air carrier or foreign air carrier when through service and through rates shall have been established, and showing to the extent required by regulations of the * * * [Board], all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the * * * [Board] shall by regulation prescribe; and the * * * [Board] is empowered to reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void. The rates, fares, and charges shown in any tariff shall be stated in terms of lawful money of the United States, but such tariffs may also state rates, fares, and charges in terms of currencies other than lawful money of the United States, and may, in the case of foreign air transportation, contain such information as may be required under the laws of any country in or to which an air carrier or foreign air carrier is authorized to operate.

* * *

Notice of Tariff Change

(c) No change shall be made in any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, specified in any effective tariff of any air carrier or foreign air carrier, except after thirty days' notice of the proposed change filed, posted, and published in accordance with subsection (a) of this section. Such notice shall plainly state the change proposed to be made and the time such change will take effect. The * * * [Board] may in the public interest, by regulation or otherwise, allow such change upon notice less than that herein specified, or modify the requirements of this section with respect to filing and posting of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

ORDERS, NOTICES AND SERVICE

Effective Date of Orders; Emergency Orders

Sec. 1005 [49 U.S.C. 645] * * *

Form and Service of Orders

(f) Every order of the * * * [Board] shall set forth the findings of fact upon which it is based, and shall be served upon the parties to the proceeding and the persons affected by such order.

ADMINISTRATIVE PROCEDURE ACT:

RULE MAKING

Sec. 4 [5 U.S.C. 1003] * * *

* * *

(b) PROCEDURES—* * * Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

ADJUDICATION

Sec. 5 [5 U.S.C. 1004]. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing * * *.

* * *

(b) PROCEDURE—The agency shall afford all interested parties opportunity for * * * hearing and decision upon notice and in conformity with sections 7 and 8.

ANCILLARY MATTERS

Sec. 6 [5 U.S.C. 1005]. Except as otherwise provided in this Act—

* * *

(d) DENIALS—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

HEARINGS

Sec. 7 [5 U.S.C. 1006]. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

* * *

DECISIONS

Sec. 8 [5 U.S.C. 1007]. In cases in which a hearing is required to be conducted in conformity with section 7—

* * *

(b) SUBMITTALS AND DECISIONS—* * * All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

CIVIL AERONAUTICS BOARD RULES OF PRACTICE:

§ 302.15 FORMAL COMPLAINTS—(a) *Form and content of formal complaints.* Formal complaints must conform to the requirements of this part concerning form and filing of documents in proceedings. They should be so drawn as fully and completely to advise the persons complained against and the Board in what respect anything has been done or omitted to be done in contravention of any provision of the act or of any requirement established pursuant thereto, the facts claimed to constitute such action or omission, and the relief sought. Formal complaints filed with the Board must be accompanied by a proof of service personally or by mail upon the person or persons complained against.

* * *

(c) *Complaints requesting suspension of tariffs.*
 (1) Formal complaints seeking suspensions of tariffs pursuant to section 1002(g) of the Act shall fully identify the tariff and include reference to the name of the publishing carrier or agent, to the CAB number, and to specific items or particular provisions protested or complained against. In addition to conforming to the requirements of paragraph (a) of this section, such complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(2) A complaint requesting suspension of any tariff

filed under the act ordinarily will not be considered unless made in conformity with this section and filed with the Board at least ten days before the effective date of the tariff. In an emergency satisfactorily shown by complainant, and within the time limits herein provided, a telegraphic complaint may be sent to the Board and to the publishing carrier or agent stating the grounds relied upon, but such telegraphic complaint must immediately be confirmed by complaint filed and served in accordance with this section.

SUMMARY OF ARGUMENT

The effect of the Board's action on petitioner and the scope of the issues before the Court lie within narrow confines. Petitioner is only affected by the Board's action to a limited extent because the Board did not determine any substantive questions but only that petitioner's protest was factually insufficient, and petitioner is still free to secure from the Board on the basis of a new protest the substantive relief it seeks here. The issues before the Court are narrow because the Board's refusal to suspend the challenged tariff followed automatically from its refusal to investigate. In the absence of an investigation it was powerless to suspend. No issues are before the Court, therefore, as to its jurisdiction to review suspension matters, as to whether the Board abused its discretion in refusing to suspend, or as to the extent of the power of the Court or the Board, with respect to the suspension of the tariff. Instead, the Court need only decide whether the Board had power to dismiss petitioner's protest without ordering an investigation and hearing, and, if so, whether it abused its discretion in doing so.

I

Section 1002(a) of the Act (Pet. Br. 5) provides that "Whenever the * * * [Board] is of the opinion that any complaint does not state facts which warrant an investigation or action on its part, it may dismiss such complaint without hearing." Therefore, the Board had power to dismiss petitioner's protest without a hearing. *Pan American-Grace Airways, Inc. v. Civil Aeronautics Board*, 85 App. D.C. 297, 178 F. 2d 34 (1949).

II

The Board did not abuse its discretion in dismissing petitioner's protest and denying its petition for reconsideration of such dismissal. Although consistency with prior actions is not a requisite to the legal validity of the Board's order, the Board's action on the protested tariff was not inconsistent with its prior action suspending and investigating Pan American's "space available" tariff because the two tariffs were different. The protested tariff was only available on two flights of cargo aircraft and expired in 7½ months, whereas the "space available" tariff was good on all passenger flights and was of indefinite duration. It is not an abuse of discretion to treat different tariffs differently.

The fact that the protest alleged that the tariff was unlawful and set forth other conclusions and opinions to the effect that it was harmful and contrary to the policies of the Act does not make its dismissal an abuse of discretion. Consistently with judicial practice in passing upon a demurrer or motion to dismiss, the Board was not bound to accept such conclusions and opinions as true in disposing of the protest. The Board had much greater freedom than a court because it was not deciding whether the protest stated a cause of action, but only whether it stated *facts* sufficient to warrant the institution of an investigation, a determination which was not finally dispositive of any substantive rights. Since the protest did not state any facts, the Board acted reasonably in dismissing it. If the Board were required to order an investigation and hearing upon every protest which alleged that a tariff was unlawful, the discretion conferred upon the Board to dismiss complaints summarily would be meaningless, an economically harmful element of inflexibility would be introduced into air transportation rates, and the Board would be deprived of the freedom of action necessary to a fair and intelligent administration of the Act.

Similarly, the Board's action of dismissal does not constitute an abuse of discretion merely because the protest alleged that the protested tariff is "below cost" and will

increase "subsidy air mail pay." Like the other conclusions and opinions alleged by petitioner, these allegations are unsupported by any facts. Petitioner may not shift to the Board the burden of searching out and assembling facts in support of its protest. And obviously this deficiency cannot be remedied by submitting facts to the Court which were not presented to the Board, as petitioner seeks to do.

The Board's action was not violative of sections 8(b) or 10(e) of the Administrative Procedure Act. By their very terms those provisions are not applicable here because the Board's order of dismissal was an exercise of discretionary authority under a statutory provision which did not require a hearing.

ARGUMENT

Introduction

The effect upon petitioner of the determinations of the Board being reviewed in this case are relatively insignificant. What the Board decided was that petitioner's protest and petition for reconsideration did not allege facts, as distinguished from general conclusions, which warranted suspension or investigation of the tariff protested. While the Board's orders are sufficiently final to permit their review in this proceeding, they did not finally determine that the protested tariff was lawful. Petitioner is still free, as it always has been, to file a new protest alleging the facts upon which it rests its conclusions, including the one that the tariff is unlawful. Thus, unlike the situation presented in most cases, the resolution of the present controversy favorably to the Board will not preclude petitioner from later securing the relief it seeks here from the Board. In a very real sense, therefore, this proceeding only concerns the sufficiency of a pleading rather than the determination of any substantive rights of petitioner. Although an adverse decision on this question would not have any permanent, serious effect upon petitioner, insistence upon factually sufficient protests is of vital importance to the effective functioning of the Board and the proper administration of the Act.

The issues in this proceeding which are properly before the Court are narrower than petitioner suggests. Petitioner asks the Court to order the Board to suspend the challenged tariff and to proceed with an investigation and hearing as to its lawfulness (Pet. Br. 23; J. App. 12). Section 1002(g) of the Act (Pet. Br. 7-8), however, authorizes the Board to suspend a tariff only before it has become effective and after the Board has entered upon a hearing as to its lawfulness, and then only pending such hearing and decision thereon, but not to exceed 180 days from the date the tariff would have otherwise become effective. Since the Board determined that petitioner's protest did not state facts warranting an investigation and hearing, it had no occasion to consider whether, if a hearing had been ordered, it should have exercised its discretion to suspend the tariff being investigated. The issue before the Court, therefore, relates solely to the question whether the Board had power, which it exercised reasonably, to dismiss petitioner's protest without ordering an investigation and hearing. The Court need not consider (1) whether it has jurisdiction to review an order of the Board involving the exercise of the Board's suspension authority under section 1002(g) of the Act (cf. *National Airlines, Inc. v. Civil Aeronautics Board* (C.A. D.C., No. 10,749) order denying stay for lack of jurisdiction, dated August 4, 1950); (2) whether, assuming the Board erred in not ordering an investigation and hearing, it abused its discretion in not suspending the challenged tariff; or (3) whether either the Court or the Board has authority to suspend a tariff after it has become effective, and more than 180 days have elapsed since its original effective date.

Since the tariff challenged by petitioner has expired, it may be determined, on the one hand, that this proceeding has become moot. On the other hand, in view of the fact that the challenged fare has been continued in effect by a subsequent tariff, it may be determined that an important and recurring question is present and that under the doctrine of *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498 (1911), the orders in question are reviewable.

I. The Civil Aeronautics Act empowers the Board to dismiss a complaint challenging the lawfulness of a tariff without hearing.

Petitioner's protest, or complaint, was filed pursuant to section 1002 of the Act and section 302.15 of the Board's Rules of Practice⁶ (J. App. 65A). The cited provision of the Act (Pet. Br. 3) authorizes "any person" to file a "complaint" with the Board. It then provides as follows:

If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the * * * [Board] to investigate the matters complained of. Whenever the * * * [Board] is of the opinion that any complaint does not state facts which warrant an investigation or action on its part, *it may dismiss such complaint without hearing.* [Emphasis supplied.]

Reciting only the first of the two above-quoted sentences from the statute, petitioner contends that a hearing on its protest was "mandatory" (Pet. Br. 18). Such a conclusion is plainly unjustified.

The italicized language quoted above makes it abundantly clear that Congress has clothed the Board with discretionary power to determine which complaints should be investigated and which should not. Following the plain language of the statute, this Court has held that the Board has power to dismiss a complaint without hearing when it does not warrant an investigation or other action by the Board. *Pan American-Grace Airways, Inc. v. Civil Aeronautics Board, et al.*, 85 App. D. C. 297, 178 F. 2d 34, 36 (1949). In that case, this Court stated: "Undoubtedly, therefore, the Board could deal as it did with the petition here [i.e. dismiss without a hearing] unless it abused its discretion

⁶ The protest states that it is filed pursuant to section 302.14 of the Rules of Practice (J. App. 65A), rather than section 302.15. This was apparently an inadvertence since section 302.14 deals with "Informal Complaints," while section 302.15, set forth in relevant part at page 6, *supra*, deals with "Complaints requesting suspension of tariffs", which is the subject of petitioner's complaint.

in so doing'' (*ibid*).⁷ We turn next to a consideration of whether the Board abused its discretion in dismissing petitioner's protest.

II. The dismissal of petitioner's protest and the denial of its petition for reconsideration of such dismissal did not constitute an abuse of discretion and were not otherwise contrary to law.

Petitioner has advanced a series of arguments as to why the Board's action constituted an abuse of discretion and was contrary to law. These are (1) that the Board's action was inconsistent with its action in connection with an earlier tariff filed by Pan American (Pet. Br. 12-14); (2) that under the allegations of the complaint the challenged tariff was unlawful (Pet. Br. 15-18); (3) that the Board's action was contrary to section 2 of the Act⁸ because the protested fare was below cost, Pan American's losses being made up by mail pay subsidy (Pet. Br. 19-21); and (4) that the Board's action violated sections 8(b) and 10(e) of the Administrative Procedure Act (Pet. Br. 21-22).⁹ Examination of these arguments discloses that none of them has any substance. We shall discuss them in order.

First. As this Court has stated, "an administrative agency is not bound by its own prior determinations." *State Airlines, Inc. v. Civil Aeronautics Board*, 84 App. D. C. 374, 174 F. 2d 510, 518 (1949), reversed on other grounds, 338 U. S. 572 (1950). The charge that the Board's action here is inconsistent with its prior action, even if true,

⁷ See *National Labor Relations Board v. Indiana & Michigan Electric Co.*, 318 U. S. 9, 18-19 (1943); Cf. *Jacobsen, et al. v. National Labor Relations Board*, 120 F. 2d 96, 100 (C. A. 3, 1941); *Attorney General's Manual on the Administrative Procedure Act*, 94-95.

⁸ 49 U.S.C. 402. Petitioner has inadvertently or erroneously referred to "Section 402 of the Act (49 U.S.C. 482)" (Pet. Br. 19, ii; cf. 3).

⁹ Petitioner also says that the "orders complained of herein have the effect of erroneously depriving petitioner of a property right contrary to the 'due process' clause of the Fifth Amendment" (Pet. Br. 22). Although oft-repeated, petitioner has not bothered to indicate how or why the deprivation occurs. Apparently it has no basis independently of petitioner's other allegations of legal error.

cannot be "a determinative factor in this case" (*ibid*). Moreover, the charge is not true.

Petitioner points out that the Board suspended, and ordered an investigation and hearing with respect to, a \$75 tariff of Pan American from Fairbanks to Seattle, asserts that this tariff "was for the same fare over the same route of the same carrier" as the tariff protested by petitioner, and argues that "as there is no evidence or finding to show changed circumstances, it follows that the same reasons which caused the Board to suspend" the earlier tariff "existed at the time the Board denied petitioner's 'protest' and its 'petition for reconsideration'" with respect to the later tariff, and its later action, therefore, "was clearly arbitrary, capricious, contrary to law and without facts to support it" (Pet. Br. 13; see also Pet. Br. i, question 2).¹⁰ This entire argument rests on the demonstrably erroneous assumption that the two tariffs in question are indistinguishable.

¹⁰ The proceedings with respect to the earlier tariff may be summarized as follows: On May 1, 1950 Pan American issued C.A.B. No. 54, proposing the earlier tariff, effective June 1, 1950 (J. App. 78A-81A). On May 26, 1950, the Board suspended this tariff and ordered an investigation with respect to it (J. App. 32A). Thereafter, petitioner protested this tariff (J. App. 34A). On June 1, 1950, Pan American issued C.A.B. No. 63, cancelling C.A.B. No. 54, effective July 1, 1950 (J. App. 82A-85A). The only effect of C.A.B. No. 63 on the Fairbanks-Seattle fare provided in C.A.B. No. 54, was a change in the effective date from June 1 to July 1, 1950 (J. App. 82A-85A). Petitioner challenged C.A.B. No. 63 by supplemental protest dated June 16, 1950 (J. App. 36A). On June 21, 1950, Pan American issued Supplement No. 1 to C.A.B. No. 54 showing that the Fairbanks-Seattle fare had been suspended, and was not cancelled by C.A.B. No. 63 (J. App. 39A). On June 30, 1950, Pan American issued C.A.B. No. 64, cancelling C.A.B. No. 63 and C.A.B. No. 54 (except the portions suspended by the Board), effective July 1, 1950 (J. App. 86A-89A). On July 28, 1950, the Board consolidated petitioner's protest and supplemental protest to C.A.B. No. 54 into the investigation and suspension proceeding (J. App. 40A). After notice of a prehearing conference was given (J. App. 43A), Pan American filed a motion to dismiss the investigation proceeding (J. App. 44A-53A), which the Board denied (J. App. 54A). On August 14, 1950, a prehearing conference was held, but petitioner did not appear (J. App. 56A). On August 23, 1950, the Board extended the period of suspension from August 30 to November 27 (J. App. 57A). On Sep-

The earlier tariff (C.A.B. No. 54, J. App. 78A) established a regular one-way fare between Fairbanks and Seattle at \$105 (J.App. 80A) as well as a special "space available fare" between those points at \$75. (J. App. 81A). The "space available fare," which was the only fare the Board suspended (J. App. 33A), while subject to restrictive rules (J. App. 81A), was not restricted either as to the flights on which it could be used or the date of its expiration. In contrast, the later tariff (C.A.B. No. 71, J. App. 90A), which is directly involved in this proceeding, not only contained restrictions with respect to "stopovers" and "overloads" similar to those contained in the earlier tariff, but also provided that the fare was only available on two south-bound flights, those being flights of cargo aircraft, and that the fare would expire on June 30, 1951, some 7½ months after it became effective (J. App. 93A; see page 3, *supra*). In view of the fact that the later tariff was only available on two flights rather than on six flights as was true of the earlier tariff (J. App. 98A-100A), that the later tariff was only available on cargo flights rather than passenger flights, and that the later tariff was effective for a limited period of time and experimental in nature, it is clear that the differences between them were sufficient to justify a difference in treatment.

Second. Petitioner also charges that the Board abused its discretion in not suspending and investigating the later

tember 1, 1950, the Board gave notice of a hearing to be held on September 12 (J. App. 60A), but on September 7, it postponed the hearing (J. App. 61A). On September 20, 1950, Pan American issued Supplement No. 2 to C.A.B. No. 54 reflecting the extension of the period of suspension of its tariff (J. App. 58A), and on September 21, 1950, effective September 22, it issued Supplement No. 3 to C.A.B. No. 54 (J. App. 62A). This Supplement, issued on one day's notice pursuant to special permission granted by the Board, completed the cancellation of C.A.B. No. 54 (J. App. 63A). On September 29, 1950, the Board, finding that the proceeding of investigation and suspension was moot, dismissed the proceeding (J. App. 63A).

On September 20, 1950, simultaneously with the issuance of Supplement No. 2 to C.A.B. No. 54, Pan American issued C.A.B. No. 71, cancelling C.A.B. No. 64 (J. App. 90A-93A). This is the later tariff with which this proceeding is concerned. The proceedings with respect to this tariff are set forth in the text above (*supra*, pp. 1-3).

tariff because the allegations of the protest and petition for reconsideration established that the tariff was unlawful (Pet. Br. 15-18). This contention rests on the assumption that the Board must accept as true all of the conclusions alleged in the protest (Pet. Br. 14-18; ii, question 5). Such an assumption is wholly unfounded. Even in judicial proceedings, a demurrer or motion to dismiss, while admitting facts well pleaded, does not admit inferences or arguments derived from those facts, conclusions of law, opinions, allegations as to the construction of instruments or statutes, etc. For example, in *Equitable Life Assurance Society v. Brown*, 213 U. S. 25 (1909), in connection with a suit arising out of a contract of insurance, the Supreme Court stated:

We are not called upon to cite authorities for the statement that a demurrer only admits facts well pleaded in the pleading demurred to. It does not admit the pleader's conclusions of law, nor does it admit the correctness of any opinion set forth in the bill * * *. Hence any construction placed by complainant upon the charter of the defendant and the insurance policy issued by the defendant to the complainant is not admitted, nor is the allegation of the ownership of the surplus by the policyholders as alleged by the complaint, nor any opinion which is expressed in the bill as to the ability of the defendant to continue business, nor is any other opinion as to future happenings admitted by the demurrer. [213 U. S. at 43.]¹¹

It is clear, therefore, that even in a judicial proceeding all of petitioner's allegations would not be taken as true; *a fortiori* they are not required to be accepted as true in this administrative proceeding. Although the Board's ruling in

¹¹ See also *Fletcher v. Jones*, 70 App. D. C. 179, 105 F. 2d 58 (1939); *Brambir v. Cunard White Star Limited*, 37 F. Supp. 906, 907 (S.D. N.Y., 1940), affirmed 119 F. 2d 419 (C.A. 2, 1941); *Dillon v. Barnard*, 21 Wall. 430 (1874); *Pennie v. Reis*, 132 U. S. 464 (1889); *Interstate Land Co. v. Maxwell Land Co.*, 139 U. S. 569 (1891); *Polk Co. v. Glover*, 305 U. S. 5 (1938); *Gibbs v. Buck*, 307 U. S. 66 (1939); *Cooper v. O'Connor*, 71 App. D.C. 6, 107 F. 2d 207 (1939), certiorari denied 308 U. S. 615 (1939); *Cohen v. United States*, 129 F. 2d 733 (C.A. 8, 1942).

this case may be "tantamount to a court's order sustaining a demurrer to a petition or complaint" (*Pan American-Grace Airways, Inc. v. Civil Aeronautics Board, et al.*, 85 App. D. C. 297, 178 F. 2d 34, 36 1949)), it is not the same thing. Unlike a court, Congress has clothed the Board with discretion to decide when it shall investigate a complaint and when it shall not (section 1002(a) of the Act); such an administrative determination quite obviously is affected by considerations other than whether the pleading states a cause of action. *Federal Trade Commission v. Klesner*, 280 U. S. 19 (1929). Moreover, the Board's determination is not finally dispositive of the substance of the complaint. Under these circumstances, the Board's refusal to exercise its discretion to suspend and investigate a tariff on the basis of the conclusions and opinions of petitioner can in nowise be twisted and bent into the shape of the legal concept of "abuse of discretion".

Petitioner's protest is bottomed on allegations that the tariff in question is "without economic justification", that the fare is "below cost",¹² that the fare "cannot be considered as promotional", that it "would be unjust, unreasonable, unjustly discriminatory, unduly preferential and unduly prejudicial to the industry and the public", that "it would spread economic chaos throughout the air transportation industry", that it would "impose heavy burdens upon the Government * * * in the form of subsidy air mail pay", that it "would unduly divert traffic from normal-fare flights", that it would "debase the entire domestic fare structure", and that it would "disrupt the present competitive balance" (J. App. 66A-67A). No facts are stated in support of these opinions and conclusions, the remainder of the protest being purely argumentative (J. App. 67A-69A). This protest was dismissed by the Board, as section 1002(a) of the Act authorizes, because it did not state "facts" which warranted investigation or suspension (J. App. 70A). In its petition for reconsideration, petitioner made no effort to

¹² Petitioner's own fare between Fairbanks and Seattle is \$65. (J. App. 46A), \$10. less than the fare petitioner protested as being "below cost".

remedy the deficiencies of its protest. It repeated its conclusions, opinions and argument with respect to the tariff in question, and took the Board to task for failing to enter into contention with petitioner as to the validity of such conclusions, opinions and arguments (J. App. 71A-75A). The Board, in denying the petition (J. App. 76A), properly ruled that the protest and petition "contain generalized allegations and conclusions but do not include facts which would support the allegations and conclusions" (J. App. 77A).

On this state of the record, a conclusion that the Board abused its discretion would not only be completely unjustified, but would destroy the statutory scheme and seriously impair the proper administration of the Act. Such a decision would mean that whenever a complaint alleges that a tariff is unlawful on the basis of conclusions and opinions without supporting facts, the Board would be compelled to suspend the tariff and to institute an investigation, including a hearing. This would nullify the discretion conferred upon the Board by Congress. It would introduce an element of inflexibility into the rate picture which would seriously jeopardize the economic conduct of air transportation, since any or all tariffs would be subject to suspension at the will of individual protestants acting in their own interests. Finally, by compelling the Board to conduct innumerable investigations and hearings, such a decision would deprive the Board of the freedom of action necessary to a fair and intelligent administration of the Act in furtherance of the policies laid down by the Congress. Such a decision, and the devastating results which would flow from it, are precluded by the statutory scheme. *Pan American-Grace Airways, Inc. v. Civil Aeronautics Board, supra.*

Third. Another facet of the contention just considered is petitioner's argument that the Board's action constituted an abuse of discretion because it violated section 2 of the Act.¹³ (Pet. Br. 19-21). While the precise basis of peti-

¹³ See note 8, *supra*. Section 2 of the Act (49 U.S.C. 402) is the Congressional "Declaration of Policy". It sets forth a list of factors which the Board is to "consider", "among other things, as being in

tioner's argument is not discernible from its brief, it apparently predicates its conclusion upon the opinions stated in its protest that the challenged fare was "below the cost of operation" and that it would "impose heavy burdens upon the Government, and thereby the taxpayers, in the form of subsidy air mail pay" (J. App. 66A). As previously stated no facts were alleged as a basis for these conclusions or opinions. The record does show, however, that petitioner's fare between Fairbanks and Seattle is \$65 (J. App. 46A), as compared with the challenged fare of \$75.

Notwithstanding petitioner's present assertion that it "was unable from this order [dismissing its protest] to determine what other or additional matter could be presented to persuade the Board to take the required action" (Pet. Br. 22), it attached six pages of statistical data relating to Pan American's costs and mail pay requirements to its petition for review without suggestion or help from the Board (J. App. 26A-31A). It is on the basis of these data, which were never presented to the Board in this proceeding, that petitioner now seeks to persuade the Court of the arbitrary character of the Board's action. Petitioner thus advances the untenable proposition that the Board abused its discretion for failing to act in accordance with petitioner's interpretation of facts which were not presented to the Board.¹⁴

Fourth. Finally, petitioner asserts that the Board's

the public interest and in accordance with the public convenience and necessity". Petitioner has set forth and referred to one of the listed factors (Pet. Br. 3, 20).

¹⁴ Petitioner may argue that the Board should have taken cognizance of these facts because they were submitted to the Board in other proceedings or were available in published sources of which the Board had knowledge. The question here, however, is not whether the Board might have obtained these data itself, and not whether it might have suspended this tariff and instituted an investigation on its own motion had it believed such course to be proper and desirable. Patently, it might have followed such a course (section 1002 (b) of the Act; Pet. Br. 5). The question here is whether it was bound to follow such a course. The statute has placed the burden on the complainant, in this case petitioner, to allege the facts in its complaint, and petitioner has not sustained that burden.

action was contrary to law because it violates sections 8(b) and 10(e) of the Administrative Procedure Act (Pet. Br. 21-22). However, by their own terms, the cited provisions are inapplicable to the Board's orders.

The introductory clause of section 8 of the Administrative Procedure Act (*supra*, p. 6), taken in conjunction with the provisions of sections 4, 5 and 7 of that Act (*supra*, p. 5), makes it clear that the requirements for "findings" and "reasons" in section 8(b) are only applicable to cases where the rule or adjudication is "required by statute" to be made or determined "on the record after an opportunity for an agency hearing." Since section 1002(a) of the Civil Aeronautics Act contains no such hearing requirement, and in fact expressly negates it, the requirements of section 8(b) of the Administrative Procedure Act have no application here.¹⁵

The contention that the Board's orders are contrary to section 10(e) of the Administrative Procedure Act (Pet. Br. 10) apparently was intended to indicate no more than that if petitioner's other arguments were correct the Court was authorized to set aside the Board's orders (Pet. Br. 22). While such a contention presents no new ground of invalidity requiring answer, it should be noted that the introductory clause of section 10 of the Administrative Procedure Act makes its provisions applicable "except so far as * * * agency action is by law committed to agency discretion", and that this has been construed to exclude orders of the kind under review from the scope of section 10. *Attorney General's Manual on the Administrative Procedure Act*, 94-95.

Petitioner also urges that the Board's orders are not supported by substantial evidence on "the whole record" (Pet. Br. 21). Its reference to "the whole record" and the case it has cited suggests that petitioner is here relying

¹⁵ The requirements of section 1005(f) of the Civil Aeronautics Act (*supra*, p. 5) and of section 6(d) of the Administrative Procedure Act (*supra*, p. 5) may be applicable to the Board's orders, but their requirements are clearly satisfied by the findings in the Board's orders (J. App. 70A-71A).

on section 10(e) (B)(5) of the Administrative Procedure Act. But the "substantial evidence" provision of that subsection is inapplicable to the orders under review not only for the reasons given in the preceding paragraph, but also because this provision is in terms limited to cases "subject to the requirement of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute."

This case is not subject to sections 7 or 8 (*supra*, pp. 5-6), nor is it being reviewed on the record of an agency hearing provided by statute. Of course, section 1006(e) of the Civil Aeronautics Act (Pet. Br. 9) contains the usual substantial evidence rule, but that provision is obviously inapplicable to a case such as this, where a protest has been dismissed for failure to state facts warranting an investigation. *Pan American-Grace Airways, Inc. v. Civil Aeronautics Board, supra*. But even if such provision were to be construed to be technically applicable in a case of this kind, it is evident that the protest itself affords substantial evidence to support the Board's findings.

CONCLUSION

Upon the basis of the foregoing reasons and authorities,
the Board's orders should be affirmed.

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